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ALEXANDER L. STEVAS,
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Nos. 81-2147, 81-2188

In The
Supreme Court of the United States

October Term, 1982

THE STATE OF ARIZONA, et al.,
Petitioners,
versus
SAN CARLOS APACHE TRIBE OF ARIZONA
AND THE NAVAJO TRIBE OF INDIANS, et al.,

THE STATE OF MONTANA, et al.,
Petitioners,
versus
NORTHERN CHEYENNE TRIBE OF NORTHERN
CHEYENNE INDIAN RESERVATION, et al.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX - VOL. I, No. 81-2147

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PETITION FOR WRIT OF CERTIORARI FILED:
NO. 2147—MAY 12, 1982; NO. 2188—MAY 21, 1982
ORDER GRANTING PETITIONS FOR WRIT OF CERTIORARI
OCT. 4, 1982

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1. *San Carlos Apache Tribe of Indians v. State of Arizona, et al.*, No. CIV 79-186 PHX CAV, CA 80-5137

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA CAUSE NO. CIV 79-186 PHX VAC

Date *Description*

Mar. 7, 1979—Complaint and exhibits filed

Mar. 19, 1979—Motion to dismiss complaint filed by State of Arizona and Salt River Valley Water Users' Association

May 17, 1979—Motion to strike, responses to motion to remand, responses to motions to dismiss and memorandum to support filed by plaintiff

June 27, 1979—Order setting cause for hearing on September 21, 1979, at 2 p.m.

August 20, 1979—State of Arizona's response to motion to strike and reply memorandum for State's motions to dismiss and remand, including memorandum of points and authorities in support of all motions

August 31, 1979—Salt River Valley Water Users' Association's response to motions to strike, reply to motions to dismiss and reply to motions to remand

Sept. 12, 1979—Order granting United States leave to file a memorandum as *amicus curiae* and memorandum of the United States as *amicus curiae*

Sept. 14, 1979—The San Carlos Apache Tribe of Arizona reply to responses to motion to strike and memorandum of points and authorities

Sept. 21, 1979—Hearing held on defendant Arizona's motion for remand, defendant Salt River Valley Water Users' Association motion for remand, in *White Mountain Apache Tribe Petition for Removal*, No. CIV 79-182 PHX VAC (D. Ariz., Petition Filed March 7, 1979); *Gila River Indian Community Petition for Removal*, CIV 79-

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES (Cont.)

Date *Description*

183 PHX VAC (D. Ariz., petition filed March 7, 1979); *Salt River Pima-Maricopa Indian Community Petition for Removal,* No. CIV 79-184 PHX VAC (D. Ariz., petition filed March 7, 1979); and defendant Arizona's motion to dismiss and defendant Salt River Valley Water Users' Association motion to dismiss in *Salt River Pima-Maricopa Indian Community v. State of Arizona* No. CIV 79-185 PHX VAC; *San Carlos Apache Tribe of Arizona v. State of Arizona,* No. CIV 79-186 PHX VAC; *Payson Community of Yavapai Apache Indians v. State of Arizona, et al.,* No. CIV 79-187 PCT VAC; and Defendants' motion to dismiss in *Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Water Users' Association, et al.,* No. CIV 79-267 PHX VAC.

Oct. 1, 1979—Memorandum of the United States concerning service of process upon the Attorney General of the United States in the state action entitled *In the Matter of Determination of Relative Rights to the Use of Waters of the Salt River and Its Tributary Watershed Above Granite Reef Dam, Excluding the Verde River and Its Tributary Watershed.*

Oct. 11, 1979—Salt River Valley Water Users' Association memorandum in opposition to United States memorandum concerning service of process

Nov. 8, 1979—Stipulation and order for amendment to motions to strike, responses to motion and motions to remand and supporting memorandum; order entered that plaintiff San Carlos Apache Tribe have leave of court to file amended motions to strike, responses to motions to dismiss, responses to motions to remand and memorandum in support thereof, and that the amended motions, responses and memorandum shall be treated in all respects as substitutions for the motions to strike, responses to motions to remand, responses to motions to

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES (Cont.)

Date *Description*

dismiss and memorandum in support thereof filed by the San Carlos Apache Tribe of Arizona on the 7th day of May, 1979

Nov. 15, 1979—San Carlos Apache Tribe of Arizona's amended motion to strike, amended response to motions to dismiss, and amended response to motions to remand

Jan. 18, 1980—Order issued remanding *White Mountain Apache Tribe Petition for Removal,* No. CIV 79-182 PHX VAC (D. Ariz., petition filed March 7, 1979); *Gila River Indian Community Petition for Removal,* CIV 79-183 PHX VAC (D. Ariz., petition filed March 7, 1979); *Salt River Pima-Maricopa Indian Community Petition for Removal,* No. CIV 79-184 PHX VAC (D. Ariz., petition filed March 7, 1979) to the state court for all further proceedings and dismissing the *Salt River Pima-Maricopa Indian Community v. State of Arizona* No. CIV 79-185 PHX VAC; *San Carlos Apache Tribe of Arizona v. State of Arizona,* No. CIV 79-186 PHX VAC; *Payson Community of Yavapai Apache Indians v. State of Arizona, et al.,* No. CIV 79-187 PCT VAC, and further dismissing *Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Water Users' Association, et al.,* No. CIV 79-267 PHX VAC, without prejudice. With regard to the plaintiff's second cause of action in *Fort McDowell,* the court is of the opinion that no action for damages can be entertained until the state has established parties' rights to the water of the Verde River watershed.

Jan. 25, 1980—Judgment entered dismissing Complaint without prejudice

Feb. 19, 1980—Notice of appeal filed

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES (Cont.)

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DOCKET NO. CA 80-5137

Date *Description*

July 17, 1980—Order that for the purpose of the record and a certificate of record, appeal Nos. 80-5137 and 80-5138 are consolidated

July 18, 1980—Certificate of record filed

July 15, 1981—Oral argument on appeal Nos. 80-5137, 5138, 5189, 5219, 5471 and 5837

Feb. 22, 1982—The opinion in *Northern Cheyenne Tribe v. Adsit*, 668 F.2d 1080 (9th Cir. 1982) was issued

Feb. 23, 1982—Opinions in *San Carlos Apache Tribe of Arizona v. State of Arizona*, No. 668 F.2d 1093, and *Navajo Nation v. United States*, 668 F.2d 1100 (1982) were issued

IN THE SUPREME COURT OF THE UNITED STATES NO. 81-2147

Date *Description*

May 12, 1982—Petition for Writ of Certiorari

Aug. 20, 1982—Brief in Opposition to Petition for Writ of Certiorari

Oct. 4, 1982—Order granting Petitions for Writs of Certiorari in Nos. 81-2147 and 81-2188 consolidated

UNITED STATES DISTRIC COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

SAN CARLOS APACHE TRIBE OF ARIZONA *Plaintiff,* -vs- THE STATE OF ARIZONA, a body politic; and THE STATE LAND DEPARTMENT OF THE STATE OF ARIZONA; and JOHN M. LITTLE, individually and as Acting Commissioner of the State Land Department of the State of Arizona; and SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation; *Defendants.*	Civil Action No. CIV 79-186 PHX COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF

For their claim against the Defendants, Plaintiff alleges:

1. This is an action for permanent injunctive relief, seeking to enjoin Defendants from any further effort to continue in proceedings as to the Plaintiff pursuant to Arizona Revised Statutes, Title 45, Chapter 1, Article 6, or any other State law, or from attempting to apply State law or jurisdiction to Plaintiff or its property and from otherwise interfering with the Plaintiff or its property; for declaratory relief, as authorized by 28 U.S.C. §§ 2201 and 2202; and alternatively for removal of certain proceedings before the State Land Department of the State of Arizona to this Court, as authorized by 28 U.S.C. § 1441.

2. The jursidiction of this Court is invoked pursuant to Article III of the Constitution of the United States of America, 28 U.S.C. §§ 1331, 1362, 2201 and 2202, and 28 U.S.C. § 1441. This action arises under the Constitution, treaties and laws of the United States. The amount in controversy exceeds $10,000, exclusive of interest and costs.

3. Venue is in the Phoenix Division of the United States District Court for the District of Arizona, pursuant to 28 U.S.C. § 1391 because one or more of the Defendants reside in or have their principal place of business in Maricopa County, Arizona, and the State proceeding giving rise to a portion of this Complaint is pending in Maricopa County, Arizona, and pursuant to Rule 1(b), Local Rules of General Application for the United States District Court for the District of Arizona.

4. Plaintiff, SAN CARLOS APACHE TRIBE OF ARIZONA, is located on the San Carlos Apache Indian Reservation in Gila, Graham and Pinal Counties, Arizona. It is a sovereign Indian Tribe recognized by the United States of America (hereinafter referred to as "United States") and organized pursuant to Section 16 of the Indian Reorganization Act of 1934. The Tribe owns and occupies a Reservation consisting of approximately two million acres which is held in Trust for the Tribe by the United States. The Reservation is presently located within the boundaries of the State of Arizona and is within a much larger aboriginal territory, occupied by the Tribe since time immemorial, encompassing millions of acres in the Southwest.

5. Defendant, SALT RIVER VALLEY WATER USERS' ASSOCIATION is an Arizona corporation doing business within the State of Arizona, (hereinafter referred to as "Defendant" or "SRV").

6. The STATE OF ARIZONA (hereinafter referred to as "State") is a body politic within the United States of America, authorized by the Congress of the United States to enact a State Constitution and to become admitted to the Union, subject to certain conditions, by the Enabling Act,

Act of June 20, 1910, c. 310, 36 U.S. Stat. 557, 568-579, dated the 10th day of December, 1910. The Territory enacted a Constitution, subject to the conditions set forth in the Enabling Act, and was admitted as the 48th State of the Union on February 14, 1912.

7. The Defendant STATE LAND DEPARTMENT is a Department of the State of Arizona.

8. The Defendant, JOHN M. LITTLE, is the Acting Commissioner of the State Land Department and Plaintiff seeks leave of the Court to amend this Complaint when and if a permanent Director is appointed and confirmed.

9. The Enabling Act, Section 20, paragraph Second, reads in part "That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title ... to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; ... that no taxes shall be imposed by the State upon lands or property therein belonging to or which may hereinafter be acquired by the United States or reserved for its use ...". The Act also provides that the State shall not tax lands which "... have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any act of Congress, ..." and "... that all such lands shall be exempt from taxation by such State so long and to such extent as Congress has prescribed or may hereinafter prescribe."

10. The Arizona Constitution, Article XX, paragraph Fourth, states in part "The people inhabiting this State do agree and declare that they forever disclaim all right and title ... to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United

States or any prior sovereignty, and that, until the title of such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States."

11. The Arizona Constitution, Article XX, paragraph Fifth, states in part that ". . . no taxes shall be imposed by this State on any lands or other property within an Indian reservation owned or held by any Indian; . . ." and that the State shall not tax ". . . lands as have been granted or acquired as aforesaid, or as may be granted or confirmed to any Indian or Indians under any act of Congress."

12. The Plaintiff and its Attorney undersigned received the document attached hereto and made a part hereof, and marked for identification as Exhibit "A" (hereinafter referred to as "Notice") by mail on or about the 5th day of February, 1979, pursuant to a Petition to Determine Conflicting Water Rights filed by the Defendant SRV on or about the 29th day of April, 1974, a copy of which is attached hereto and made a part hereof, and marked for identification as Exhibit "B".

13. The Notice purports to be made pursuant to State law and further purports to require the Tribe to take certain actions and pay certain money or fees by a date certain concerning its property or to suffer ". . . possible loss of said water rights for failure to comply . . ." with the proceeding referenced in Exhibit "A" pursuant to Arizona law.

14. The Notice was purportedly served by the State Land Department, when actually the Notice, the costs of such Notice and exclusive custody and control of such Notice was in Defendant SRV.

15. Defendant SRV has made no significant effort in that proceeding concerning the Petition, Exhibit "B", since filing it on the 29th day of April, 1974, except for the Notice, Exhibit "A", mailed by it.

16. The Tribe does not know the nature of the Notice, Exhibit "A", or proceedings from which it purports to be issued, but alleges that such Notice and proceedings are administrative in character and are inapplicable, defective and void as to the Tribe.

17. The requirement of the payment of money or fees as set forth in the Notice is confiscatory and unreasonable and is in the nature of a tax to which the Tribe and its property are immune, and are prohibited by the Constitution, laws and treaties of the United States, the Enabling Act and the Constitution of the State of Arizona.

18. The Tribe and its property, including water and water rights, are subject only to Tribal law and certain specific provisions of the laws, treaties and Constitution of the United States, and owned by the Tribe, and is the subject of a Trust relationship with the United States.

19. The Tribe and its property are immune from and are not subject to the law or jurisdiction of the State. The Tribe has not consented, and by this action does not consent, to waive its immunity or that the State has jurisdiction over or that State law applies to the Tribe or its property, or to be served with Notice, Exhibit "A", through its Tribal Chairman or Attorney.

20. Determination of the priority and extent of the Federal Trust and Tribal water rights held for or by the Plaintiff involves substantial and important questions arising under the Constitution, laws and treaties of the United States.

21. That an actual and irreconcilable controversy exists between the Tribe and the Defendants, from which controversy the Tribe seeks injunctive, declaratory and other relief from this Court.

22. The actions of the Defendants threaten irreparable harm and injury as a result of the unlawful actions which threaten loss of Tribal property, including water rights, and the imposition of confiscatory fees which are in the nature

of taxes, and there is no adequate remedy by which Plaintiff can be protected from such threatened harm and injury except through grant by this Court of the declaratory and injunctive relief herein requested.

23. The Tribe makes only a limited appearance before this Court for purposes of such Declaration and Relief and does not consent to be sued or to a change in the nature of this action by this limited appearance.

24. The State has no in personam or subject matter jurisdiction over the Plaintiff or its property, including its water rights.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that the State of Arizona has no subject matter or in personam jurisdiction over the Plaintiff or its property, including its water rights, in the proceedings which are the subject matter of this action.

2. Declare that the Plaintiff and its property, including its water rights, are immune from and are not subject to the law or jurisdiction of the State, and that the Plaintiff has not consented to waive its immunity, has not consented to the jurisdiction of the State over it or its property, including its water rights, and has not consented that the State law applies to the Plaintiff or its property, including its water rights.

3. Declare that the Notice, Exhibit "A", and proceedings represented by Exhibit "B" attached hereto are administrative, inapplicable, defective and void as to the Plaintiff, and that Defendants have no jurisdiction in such proceeding to make any determination affecting any water rights of the Plaintiff, and that Defendants are acting in excess of their authority and jurisdiction.

4. Declare that the Enabling Act conditions the entry into the Union of the State of Arizona and prohibits the State from applying its laws to or attempting to control the property of the Plaintiff, including its water rights, and from taxing the Plaintiff or its property, including its water rights.

5. That the Constitution of the State of Arizona prohibits the State from applying its laws to or attempting to control the property of the Plaintiff, including its water rights, and from taxing the Plaintiff or its property, including its water rights.

6. Declare that the Notice, Exhibit "A", and the Petition, Exhibit "B" are part of an administrative procedure and not a "civil action" within the meaning of 28 U.S.C. 1441. In the alternative, should this Court declare that such Notice and Petition are a "civil action" within the meaning of 28 U.S.C. 1441, the Plaintiff's requests that this Court treat the appropriate portion of the Plaintiff's limited appearance as a Petition for Removal pursuant to 28 U.S.C. 1441 and to remove the proceeding to this Court for further consideration.

7. Permanently enjoin the Defendants from any further effort to continue its proceedings, from attempting to apply State law, from attempting to exercise its jurisdiction, from determining the nature and extent of the Plaintiff's water rights, or from otherwise interfering with the Plaintiff and its property.

8. For Plaintiff's costs herein incurred, together with reasonable attorney fees.

9. For such other and further relief as may be necessary or proper.

DATED, this 7th day of March, 1979.

SPARKS & SILER, P.C.
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Suite 1
Scottsdale, Arizona 85251

By /s/ JOE P. SPARKS
Joe P. Sparks
Attorneys for the Plaintiff,
San Carlos Apache Tribe of
Arizona

STATE OF ARIZONA
County of Maricopa } ss.

NED ANDERSON, being duly sworn, upon oath deposes and says that he is the Tribal Chairman of the SAN CARLOS APACHE TRIBE OF ARIZONA; that he has read the foregoing Complaint for Declaratory Judgment and Permanent Injunctive Relief; and that the statements contained therein are true to the best of his knowledge, except those statements made upon information and belief, and as to those, he believes them to be true.

/s/ NED ANDERSON
Ned Anderson

SUBSCRIBED AND SWORN to before me this 7th day of March, 1979.

/s/ TONI K. GRUCKY
Notary Public

My commission expires:

My Commission Expires Feb. 5, 1980

STATE OF ARIZONA
County of Maricopa } ss.

JOE P. SPARKS, being first duly sworn, upon his oath deposes and says:

I am one of the members of the law firm of SPARKS & SILER, P.C., the attorneys for the plaintiffs in the above entitled action; I have read the foregoing complaint and the statements are true to the best of my knowledge, information and belief; and as to such matters therein alleged upon information and belief, I believe them to be true.

/s/ JOE P. SPARKS
Joe P. Sparks
Attorneys for Plaintiff,
San Carlos Apache Tribe of
Arizona

SUBSCRIBED AND SWORN to before me this 7th day of March, 1979.

/s/ TONI K. GRUCKY
Notary Public

My Commission Expires:

My Commission Expires Feb. 5, 1980

ARIZONA STATE LAND DEPARTMENT
NOTICE

TO ALL CLAIMANTS, USERS OF THE WATERS OF THE SALT RIVER AND ITS TRIBUTARY WATERSHED AREA ABOVE GRANITE REEF DAM, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARY WATERSHED AREA:

A. The State Land Department, pursuant to the provisions of Arizona Revised Statutes, Title 45, Chapter 1, Article 6, hereby gives NOTICE the Department will conduct proceedings for the taking of testimony relating to the determination of the relative rights of the various claimants to the right of use of the waters of the above described river system.

B. In compliance with the law, the Department is enclosing a form entitled "Statement of Claimant"; this form when executed, is required to be filed with the State Land Department together with accompanying statutory fees. The fee schedule is hereinafter set forth in this notice.

C. Claimants are hereby NOTIFIED that on the dates and places set forth in this notice (below) the Department will accept the "Statement of Claimant" (testimony) concerning claimant's rights to use of the waters of the river or supply.

D. The "Statement of Claimant" is required by law to be verified before a Notary Public, or by an authorized Officer of the State Land Department.

E. The "Statement of Claimant" required by this proceeding is in addition to any other statutory requirements relating to water.

F. The attention of claimant is directed to the provisions of Title 45, Chapter 1, Article 6, ARS relating to his rights and responsibilities and the possible loss of said water rights for failure to comply in this proceeding. A copy of

said law will be made available for examination at the time and places set forth below for the taking of testimony.

G. "Statement of Claimant" forms may be filed at any of the following Arizona State Land Department Field Office locations or the State Land Department in Phoenix on the dates indicated during regular office hours (8:00 a.m. to 5:00 p.m.), unless extended or changed by Order of the State Land Department.

(The dates shown below are all in calendar year 1979)

*GLOBE, ARIZONA Gila County Building 1400 East Ash Street	*PAYSON, ARIZONA Payson Women's Club Building 510 West Main Street
March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28.	March 15, 16, 19, 20, 23, 28, 29, 30.
April 12, 13, 16, 17, 19, 20, 23, 24, 25, 26.	April 2, 3, 6, 9, 11, 12, 13, 16, 17, 18, 19, 20.
*SHOW LOW, ARIZONA Chamber of Commerce Bldg. South 17th Drive and West Deuce of Club's Road	*PHOENIX, ARIZONA State Land Department 1624 West Adams St. (Main office) 3rd Floor, Water Rights Division Phone (602) 255-4629
March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28.	March 15, 16, 19-23, 26-28.
April 12, 13, 16, 17, 18, 19, 20, 23, 24, 25.	April 12, 13, 16-20, 23-26. May 1-4, 7-11.

THE TAKING OF TESTIMONY MAY BE ADJOURNED FROM TIME TO TIME AND FROM PLACE TO PLACE BY THE DEPARTMENT FOR THE CONVENIENCE OF THE PERSONS INTERESTED.

All adjournment schedules will be posted at the location of the place for taking of testimony and at the offices of the State Land Department, Room 308, 1624 West Adams, Phoenix, Arizona 85007. Any information concerning same may be obtained by calling 255-4629.

H. Claimants who are unable to file their statement in person on the dates and at the locations listed above, may mail the "Statement of Claimant" form with required fees, to the State Land Department during the interim of March 5, 1979 to midnight, June 30, 1979, unless the time for filing is extended by Order of the State Land Department.

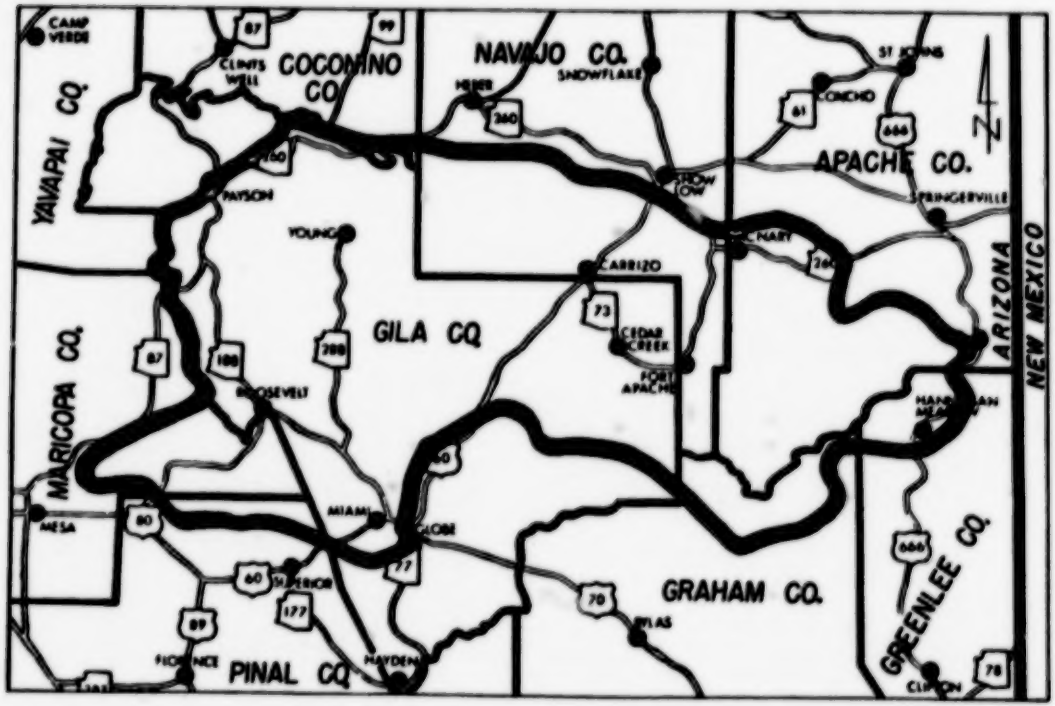
I. FEE SCHEDULE:

At the time of filing, a county recording fee of $2.00 shall be paid for each separately filed "Statement of Claimant". In addition to the county recorder fee, the following fee(s) shall be paid at the time of filing:

1. For irrigated land, a fee of twelve cents ($0.12) for each acre of irrigated lands up to and including one hundred (100) acres, and ten cents ($0.10) of each acre of irrigated lands in excess of one hundred (100) acres. The minimum fee is two dollars and fifty cents ($2.50).
2. For power purposes, the applicant is advised to contact the Department.
3. For any other character of claim to water, a fee of five dollars ($5.00).

J. The original Order, authorizing the publication of this "NOTICE" and approving the "Form" (Statement of Claimant) is on file at the offices of the State Land Department. Any questions concerning the same, may be directed to the State Land Department at the locations set forth above or by calling (602) 255-4629.

Salt River And Its Tributary Watershed



ARIZONA STATE LAND DEPARTMENT

EXHIBIT A

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIMANT

(Leave Blank)

File No. _____

Filed: _____ at _____ M
(date) (time)

IN THE MATTER OF DETERMINATION OF RELATIVE RIGHTS TO THE USE OF WATERS OF THE SALT RIVER AND ITS TRIBUTARY WATERSHED ABOVE GRANITE REEF DAM, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARY WATERSHED.

The State Land Department has enclosed with the accompanying Notice this form on which claimant shall present as required, the particulars of his claim of right to the subject waters. All applicable portions must be completed. A separate Statement of Claimant must be submitted for each source or point of diversion of public water unless those waters are commingled prior to use. A map published by the United States Geological Survey or a map of equal standard shall be submitted with this Statement showing on the face of the map the particulars of point of diversion, place of use and other pertinent information.

(Print or type. If more space is required, use explanatory at end of form, or attachment.)

1. Name of Claimant: _____
(Last) (First) (M.I.)

_____
(Address, City, State, Zip) (Telephone No.)

2. State the nature of the right or use on which claim is based: (indicate, and attach supporting documentation)

A. ____ Right to surface water initiated by beneficial use prior to June 12, 1919. Indicate registry number if previously submitted under Water Rights Registration Act _____.

B. ____ Court Decreed Water Right. Cite Title and Date of Case ____ Cause No. _____ County _____.

C. ____ Application for Permit to Appropriate Water filed. State Land Department Application No. _____, Permit No. _____, Certificate of Water Right No. _____ _____.

D. ____ Claim of Water Right for a Stockpond. State Land Department Application No. _____.

E. ____ Other. Describe: _____.

3. A. Date of initiation of right: _____.
(Month/Day/Year)

B. Date water first used for beneficial purposes: _____.
(Month/Day/Year)

4. Purpose, annual amount and annual period of use:

Purpose	Amount	Month/Day	Month/Day
Irrigation	_____ ac.ft./gallons	From _____	to _____
Domestic	_____ ac.ft./gallons	From _____	to _____
Stockwater	_____ ac.ft./gallons	From _____	to _____
Municipal	_____ ac.ft./gallons	From _____	to _____
Power	_____ ac.ft./gallons	From _____	to _____
Mining	_____ ac.ft./gallons	From _____	to _____
Recreation	_____ ac.ft./gallons	From _____	to _____
Wildlife	_____ ac.ft./gallons	From _____	to _____
Other Uses	_____ ac.ft./gallons	From _____	to _____

5. A.(1) If for irrigation purposes, describe place of use: (also indicate on map)

Township (N/S)	Range (E/W)	Section	Legal Subdivision	No. of Acres
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(2) If land reclaimed over period of years, indicate schedule and amount of land reclaimed first and each subsequent year(s): _____

5. A.(3) Indicate kind of crops cultivated: _____
Character of soil: _____

B. If for domestic purposes, number of persons: _____, or families: _____.

C. If for stockwater purposes, number and kind of stock watered: _____

D. If for municipal purposes, population to be served, and estimate of future requirements: _____

_____

E. If for power purposes, describe type of plant and capacity : __

_____

F. If for mining purposes, describe purpose of use, location and charracter of the mine(s) to be served: _____

_____

G. If for recretional purposes, describe: _____

_____

H. If for wildlife purposes, including fish, describe: _____

_____

I. If for other purposes, describe: _____

_____

6. A. Direct source of public water diverted: _____ tributary to _____ on the _____ watershed.

B. Point of Diversion (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

C. Place of use (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

7. State *all other* sources of water supply *not* described in *Question 6* of this form.

A. Type of Source: _____.

B. Location of Source (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

C. If other source is well, list following:

(1) Date well construction began: _____ (Month/Day/Year); Date well placed in use: _____ (Month/Day/Year).

(2) Location (10 acre subdivision) (indicate on map): _____ ¼ _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base Meridian, County of ___ _____.

(3) State Land Department Intent to Drill, File No. _____, or Application for Permit No. _____.

(4) State whether free flowing or pump: _____. If pump, list type of pump and capacity: _____.

(5) Casing depth _____ ft. Total well depth _____ ft. Diameter of casing _____ inches.

(6) Depth to water: _____ ft. (Static Level)

(7) Annual amount pumped, or otherwise extracted: _____ Ac.Ft./Gallons

(8) State purpose of use: _____.

(9) Indicate annual period of use: _____ (Month/Day) to _____ (Month/Day).

8. Water storage reservoir and/or diverting works:

A. Location (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

B. Name of storage reservoir and/or diverting works (if known): _____.

C. Maximum capacity: _____ Ac.Ft.

D. Maximum depth of water: _____ ft.

E. (1) Year construction began: _____.

(2) Year construction completed: _____.

(3) Date water first stored: _____ (Month/Year).

F. If dam, list following:

(1) Construction material: _____.

(2) Maximum Length: Top _____ ft.; Bottom _____ ft.

(3) Maximum Width: Top _____ ft.; Bottom _____ ft.

(4) Maximum Height: _____ ft.

G. If diverting works, describe: _____ _____.

9. Distribution works:

A. If ditch or canal:

(1) Date construction began: _____ (Month/Day/Year).

Date construction completed: _____ (Month/Day/Year).

(2) Length of ditch or canal to first place of use: _____ ft., total length of ditch or canal: _____ ft.

(3) Top width: _____ ft.; Bottom width: _____ ft.

(4) Grade (slope) of ditch: _____.

(5) If ditch or canal owned and/or operated by an association or company or such other entity, list name of association or company or such other entity: _____.

B. If pipeline:

(1) Type: _____ (i.e., aluminum, steel, etc.)

(2) Diameter: _____ inches.

(3) Length of pipeline to first place of use: _____ ft. and total length of pipeline: _____ ft.

(4) Grade (slope) of pipeline: _____.

C. If other, describe: _____

_____.

10. Enlargement(s) of storage reservoir and/or diverting and/or distributing works.

A. Date begun: _____.
(Month/Day/Year)

Date completed: _____.
(Month/Day/Year)

B. Describe details of enlargement(s): _____

_____

C. Dimensions of works as originally constructed and as enlarged: _____

_____

Explanatory

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(continued on the next page)

_____

_____

_____

_____

_____

_____

_____

(if more space is required, attach separate sheet(s)

STATE OF ARIZONA
County of _____ } SS

VERIFICATION

_____, _____
(please print Claimant-Affiant's name) (Claimant-Affiant representative's name)

being first duly sworn, deposes and says; That the affiant, or its duly authorized representative, possesses the knowledge and the authorization to execute this verification as to the correctness and truthfulness of the matters set forth in the "Statement of Claimant", except as to those matters alleged upon information and belief, and as to those matters believes them to be true and correct.

For Corporations, Partnerships, Associations, etc.

_____
Claimant-affiant representative's signature

Attest: _____
Claimant-affiant representative's signature

SEAL

_____
Claimant-affiant signature

_____
Claimant-affiant signature

Subscribed and sworn to before me this __day of_____, 19__.

_____
Notary Public or authorized Officer of the State Land Department

My Commission expires

_____

EXHIBIT B

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the matter of the determination of conflicting rights to the use of water from the Salt River above Granite Reef Dam and its tributaries including Tonto Creek, excluding the Verde River and its tributaries. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW the SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation, and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, by its Articles of Incorporation and by agreement with the United States of America is charged with the duty of and is engaged in the delivery of water to all of the land having a valid water right situated within the Salt River Reservoir District.

II.

That the rights to the use of water upon land situated within the Salt River Reservoir District have been duly adjudicated and approved by that certain decree commonly referred to as the Kent Decree in the case of *Hurley vs. Abbott*, No. 4564 in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

III.

That as a result of the said Kent Decree and the appropriations made by the Petitioner and the United States of America for and on behalf of the Petitioner's shareholders prior to June 20, 1919, the date of the passage of the State Water Code, there has been appropriated by the Petitioner's shareholders and others all of the water of the Salt River and the Verde River and all of the tributaries thereto above Granite Reef Dam; that all of said appropriated waters, since their respective dates of appropriation, have been and continue to be beneficially used by Petitioner's shareholders and others.

IV.

That, notwithstanding that all of the waters of the Salt River and its tributaries above Granite Reef Dam, including Tonto Creek, have been lawfully appropriated and are now being put to beneficial use, your Petitioner is informed and believes and therefore alleges that from time to time from June 20, 1919 to the present, other diversions and uses of water have been made and are being made from the Salt River and its tributaries, including Tonto Creek, for irrigation and other purposes; that said diversions of water have been made without any legal right and have been made contrary to the laws of the State of Arizona and contrary to the State Water Code of the State of Arizona, all of which diversions and uses are in conflict with and result in damage to your Petitioner's shareholders and the other landowners having valid appropriative rights to the use of such water by reason of the resulting diminished supply of the Salt River.

V.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from the Salt River and its tributaries has been made for the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, which said land is more particularly described by

township and range in Exhibit "A", attached hereto and by this reference made a part hereof and which said land is further shown on the map attached hereto, marked Exhibit "B" and by this reference made a part hereof.

VI.

That a determination of the relative rights of the various claimants to the waters of the Salt River and its tributaries in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245, is justified by reason of the large number of claimants to establish the legal rights of each.

WHEREFORE, your Petitioner respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245.

DATED THIS 26TH DAY OF APRIL, 1974.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

BY /s/ R. J. MCMULLIN
R. J. McMullin
General Manager

STATE OF ARIZONA
County of Maricopa } ss.

On this the 26th day of April, 1974, before me, the undersigned Notary Public, personally appeared R. J. McMullin who acknowledged himself to be the General Manager of the SALT RIVER VALLEY WATER USERS' ASSOCIATION, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ DON E. SMITH
Notary Public

My Commission Expires May 3, 1975

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In the matter of the Determination of Conflicting Rights to the Use of Water from the Salt River Above Granite Reef Dam and Its Tributaries Including Tonto Creek, Excluding the Verde River and Its Tributaries. SALT RIVER VALLEY WATER USERS' ASSOCIATION *Petitioner,* WHITE MOUNTAIN APACHE TRIBE, *Claimant.*	No. CIV 79-182 PHX-VAC

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Salt River Above Granite Reef Dam and Its Tributaries Including Tonto Creek, Excluding the Verde River and Its Tributaries. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *Petitioner,* GILA RIVER INDIAN COMMUNITY, *Claimant.*	No. CIV 79-183 PHX-VAC

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Salt River Above Granite Reef Dam and Its Tributaries Including Tonto Creek, Excluding the Verde River and Its Tributaries. SALT RIVER VALLEY WATER USERS' ASSOCIATION *Petitioner,* SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, *Claimant.*	No. CIV 79-184 PHX-VAC

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, *Plaintiff,* v. THE STATE OF ARIZONA, et al., *Defendants.*	No. CIV 79-185 PHX-VAC
SAN CARLOS APACHE TRIBE OF ARIZONA, *Plaintiff,* v. THE STATE OF ARIZONA, et al., *Defendants.*	No. CIV 79-186 PHX-VAC
PAYSON COMMUNITY OF YAVAPAI-APACHE INDIANS, *Plaintiff,* v. THE STATE OF ARIZONA, et al., *Defendants.*	No. CIV 79-187 PHX-VAC

MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE

On April 29, 1974, the Salt River Valley Water Users' Association (hereinafter the Association) filed a petition with the State Land Department, pursuant to A.R.S. §45-231, *et seq.*, to determine conflicting rights to the use of water from the Salt River above Granite Reef Dam excluding, however, the Verde River and its tributaries. Five years later, notices were mailed to all *potential* claimants upstream from Granite Reef Dam.[1] These potential claimants, the number of which the United States believes far exceeds the number of actual claimants, were given less than 5 months to submit their claims to water under penalty of forfeiture.[2]

The United States and several Indian tribes received copies of the mailed notice of the administrative proceedings on February 5, 1979. Three tribes filed removal petitions (Nos. 79-182, 79-183, and 79-184) and, simultaneously, also filed three declaratory actions (Nos. 79-185, 79-186, and 79-187). It is these six cases in which the United States seeks to appear as *amicus curiae*. The United States opposes the State's and the Association's motions to remand the three removal petitions, and also opposes the State's and the Association's motions to dismiss the actions for injunctive and declaratory relief filed by the three tribes.

Apparently, in response to the tribes' filing of the petitions for removal and the three actions for declaratory relief and to other water rights litigation pending in federal courts in Arizona, the state legislature enacted Senate Bill 1239. Since this bill was passed as an emergency measure, it

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[1] The United States has never been properly served in these proceedings; hence, it appears as *amicus curiae*. The Attorney General did receive a copy of the mailed notice of the *administrative* proceedings to which it has not waived its sovereign immunity.

[2] The United States has been informed that the date for filing claims has been extended to December 31, 1979.

became effective when the Governor signed it on April 24, 1979.[3]

In its main features, the bill transfers the adjudications of conflicting water rights from the State Land Department to the state court system. The bill also transfers nearly all functions concerning the administration of state water rights from the State Land Department to the Arizona Water Commission. The bill purports to subject Indians and federal reserved rights to adjudications in the state court system.

Issues Presented

1. Whether the disclaimer clause contained in the Arizona Constitution ousts the State of jurisdiction to declare and administer the tribal reserved right to water in the Salt River watershed.

2. If issue one is decided adversely to the position of the United States, whether this Court ought to retain jurisdiction of the removed state proceedings.

3. If issues one and two are decided adversely to the position of the United States, whether this Court ought to retain jurisdiction of the actions for declaratory and injunctive relief filed by the tribes.

4. Whether the state proceedings were properly removed to federal court.

ARGUMENT

Introduction

The issue presented to this Court by the motions to remand and motions to dismiss may well be determinative of the question of which forum, state or federal, will eventually determine federal and Indian reserved water rights in the State of Arizona. This Court need not be reminded that there is no more important question facing the Indian tribes, the United States, and the State than the allocation

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[3] A copy of the bill is appended to the brief of the Association in support of its motion for remand and dismissal.

of the limited water supply in the State. The United States submits in this brief that the action was properly removed, that the tribes are entitled to maintain the actions for declaratory relief, and, principally, that this Court ought to dismiss the state proceedings as to the United States and the five Indian tribes who were mailed notices of the state proceedings or, alternatively, that this Court ought to retain jurisdiction of the removed state proceedings.

I. The State has disclaimed any jurisdiction over tribal water rights.

The disclaimer clauses in Arizona's enabling act and constitution underscore the importance of tribal sovereignty and water rights. The language in the Arizona constitution (Ariz. Const., Art. 20, §4, A.R.S.) substantially duplicates that of the Arizona Enabling Act (36 Stat. 569):

> That the people inhabiting said proposed state do agree and declare that they forever discaim all right and title to . . . all lands . . . owned or held by any Indian or Indian tribes . . . and until the title of such Indian or Indian tribes shall have been extinguised the same shall be and remain subject to the dispostion and under the absolute jurisdiction and control of the Congress . . . .

The intent of the disclaimer is clear. Indian lands in Arizona are under federal jurisdiction. The disclaimer extends to Indian water rights reserved in connection with the lands. *See, United States* v. *Winters*, 207 U.S. 564 (1908). This disclaimer has not been repealed by Congress, nor has its revocation been consented to by the people of Arizona. Until it is repealed or modified, the Arizona courts are precluded from exercising jurisdiction over Indian water rights in Arizona. *Colorado River Conservation District* v. *United States*, 424 U.S. 800 (1976) (hereinafter *Akin*), is distinguishable because it arose in Colorado which does not have a disclaimer clause. *Akin* holds that the limited waiver of the Government's sovereign immunity in the McCarran Amendment permits the adjudication of tribal reserved

water rights held by the United States. However, the *Akin* decision cannot fairly be read to have repealed the disclaimer clause in the Arizona enabling act. In fact, *Akin* intimates that state jurisdiction pursuant to the McCarran Amendment would be precluded "if the state proceeding were in some respects inadequate to reslove the federal claims." *Akin, supra*, at 820. The state proceeding is inadequate as a general stream adjudication because the McCarran Amendment did not repeal the bar to Indian claims for reserved rights contained in Arizona's enabling act and constitution.[1]

In examining the effect of the McCarran Amendment on the disclaimer clause, one must begin one's analysis by adhering to the " 'cardinal rule . . . [of statutory construction] . . . that repeals by implication are not favored' "; that " 'the intention of the legislature to repeal must be clear and manifest' "; and that only " 'a clear repugnancy between the old and the new [law] results in the former giving way . . . .' " *Tennessee Valley Authority* v. *Hill*, 437 U.S. 153, 189-190 (1978). The Court in *Hill* reiterated its holding in *Morton* v. *Mancari*, 417 U.S. 535 (1974), that:

> In the absence of some affirmative showing of an intent to repeal, the only permissible justification from a repeal by implication is when the earlier and later statutes are irreconcilable. *T.V.A.* v. *Hill, supra*, at 190 quoting *Mancari, supra.*

Mancari also confirmed the precepts that:

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[1] The Solicitor General is considering whether to seek certiorari in the case of *Jicarilla Apache Tribe* v. *United States*, _____ F.2d _____, Tenth Circuit No. 77-1737, decided June 22, 1979. An examination of the *Jicarilla* opinion discloses that many of the issues presented in this case may be considered by the Supreme Court next term. This fact dictates retention by this Court of jurisdiction over this matter. The United States will keep the Court and the parties fully informed of developments in the *Jicarilla* case.

> Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment . . .
>
> The Courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed intention to the contrary, to regard each as effective. 417 U.S. at 550-551.

The recent case of *Bryan* v. *Itasca County*, 426 U.S. 373 (1976), discussed this question in some detail. The question in *Bryan* v. *Itasca County, supra*, was whether an ambiguous statute which granted the State of Minnesota some civil and criminal juridiction over Indians also abolished immunity from personal property taxes on property held by Indians on an Indian reservation. The Court held at 426 U.S. 392-396 that:

> Finally, in construing this "admittedly ambiguous" statute, we must be guided by that "eminently sound and vital canon," that "statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians." This principle of statutory construction has particular force in the face of claims that ambiguous statutes abolished by implication Indian tax immunities. "This is so because . . . Indians stand in a special relation to the federal government from which the states are excluded unless the Congress has manifested a clear purpose to terminate [a tax] immunity and allow states to treat Indians as part of the general community." What we recently said of a claim that Congress had terminated an Indian reservation by means of an ambiguous statute is equally applicable here to the respondent's claim that § 4(a) of Pub L 280 is a clear grant of power to tax, and hence a termination of traditional Indian immunity from state taxation:

> "Congress was fully aware of the means by which termination could be effected. But clear termination language was not employed in the ... Act. This being so, we are not inclined to infer an intent to terminate ... A congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." [Citations omitted]

The effect of these principles is to insure that abandonment of Congress' policy of furthering tribal sovereignty cannot be lightly imputed. *Morton* v. *Mancari, supra*, at 511; *see also, Menominee Tribe* v. *United States*, 391 U.S. 404 (1968). Because water rights are integral to the viability of Indian reservations in the arid west, *see, United States* v. *Winters, supra; Arizona* v. *California*, 373 U.S. 546 (1963), these principles should be scrupulously applied. The Court in *Akin* applied them and found that the McCarran Amendment did not in any way diminish federal court jurisdiction under 28 U.S.C. 1331 and 1345. It reasoned that there was "no irreconcilability in the operation of both statues." 424 U.S. at 809. The *Akin* Court also looked at existing federal law prohibiting jurisdiction over Indian water rights (25 U.S.C. 1322(b) and 28 U.S.C. 1360(b) (P.L. 280)) and reasoned that it:

> only qualifies the import of the general consent to state jurisdiction given by those sections. It does not purport to limit the special consent to jurisdiction given by the McCarran Amendment. 424 U.S. 812-813 n. 20.

But the Court's observation in that footnote does not breach the barriers to jurisdiction over tribal water rights in disclaimer states such as Arizona. Analysis of the McCarran Amendment and the disclaimer clause in Arizona's constitution in this context leads to the conclusion that Arizona is disabled from exercising jurisdiction in this case. The Supreme Court's recent decision in *Washington* v. *Confederated Bands and Tribes of the Yakima Nation (Yakima)*, ____U.S.____, 99 S.Ct. 740 (1979), supports this

reasoning. *Yakima* concerns the relationship between a disclaimer clause identical to Arizona's and P.L. 280 which offered states criminal and civil jurisdiction on Indian reservations "notwithstanding the provisions of any Enabling Act for the admission of a State [to the Union]. . . ." The Supreme Court held that that phrase explicitly expressed Congress' intent to eliminate federal barriers in disclaimer clauses for all states wishing to assume jurisdiction. The Court went on to hold that it was essentially a question of state law whether the Washington legislature had in effect amended its constitution by passing an Act accepting jurisdiction. Thus, Congress' decision to offer jurisdiction on Indian reservations to the states was accomplished in full compliance with the earlier-discussed statutory construction principles. P.L. 280 explicitly repealed "any federal impediments to state jurisdiction that may have been created by a state Enabling Act." *Yakima, supra,* 99 S.Ct. at 755. However, the McCarran Amendment evinces no similar intention to repeal the disclaimer clause in the Arizona enabling act, though enacted less than a year prior to P.L. 280. Congress knew how to effect a repeal of the disclaimer clause barriers to jurisdiction over Indians. It explicitly did so in P.L. 280, but not in the McCarran Amendment. Because Arizona has not adopted general P.L. 280 jurisdiction (*McClanahan* v. *Arizona Tax Comm.*, 411 U.S. 164 (1973); *Williams* v. *Lee*, 358 U.S. 217 (1959)), the Court is required to give effect to both the disclaimer clause and the McCarran amendment. *Mancari, supra,* at 551; *Akin, supra,* at 808-809. Thus, given the continuing vitality of Arizona's disclaimer clause, the McCarran Amendment simply cannot be read to extend jursidiction to Arizona courts to adjudicate tribal water rights until Congress repeals the provisions of the enabling act and the disclaimer clause under discussion.

Since the State of Arizona has no jursidiction over Indian water rights and, hence, may not adjudicate or administer those rights, the state proceedings as to the United States and the five tribes must be dismissed. By definition, the

state proceedings cannot be a general adjudication within the meaning of the McCarran Amendment if Indian reserved rights are not included in the suit.

II. This Court should retain jurisdiction of the removed case so that federal and Indian reserved rights will be litigated in federal court.

If this Court does not accept the argument made in section I of this brief, then the United States contends that this Court should retain jurisdiction of the removed proceedings. There are two principal arguments in support of this contention. First, nearly every question presented by this litigation is a question of federal rather than state law. Second, the federal court is as convenient a forum as the state court.

1. *Questions of federal rather than state law permeate this dispute.*

The reserved rights of the Federal Government and of the Indian tribes are wholly derived from federal common law and they do not depend upon state law for their definition or quantity. *United States* v. *Winters*, 207 U.S. 564 (1908); *Arizona* v. *California*, 373 U.S. 546 (1966); *Cappaert* v. *United States*, 426 U.S. 128 (1976). The assertion by the State and the Association that a "federal question" is not presented on the face of the notice is simply absurd. This "federal question" argument is addressed in section V of this brief.

In addition to this primary question of federal law, there are additional federal questions which will face whatever court eventually adjudicates the water rights in the Salt River watershed.

It is the position of the United States that a thorough analysis of the circumstances surrounding this proceeding dictates that the proper forum is the federal court. Signifi-

cant federal involvment in this stream system and the numerous federal issues that will have to be decided in any proceeding involving the Salt River dictate that the Court retain jurisdiction.

As indicated in the petition filed by the Salt River Valley Water Users' Association, the Users' Association and the United States were partners in the development of one of the first reclamation projects to be started under the Reclamation Act of 1902. The Salt River Project, as it has come to be known, is a product of numerous contracts and agreements between the Federal Government and the Users' Association. One of those contracts, executed on June 25, 1904 (copy attached as Exhibit A), indicated that the Association members would determine among themselves the relative priorities of their water rights. As a result, the case known as *Hurley* v. *Abbott* was initiated in territorial court for that purpose.

The United States intervened in the *Hurley* v. *Abbott* case on its own behalf and on behalf of certain Indians, living on two nearby reservations, who claimed appropriative rights to Salt River water. Subsequent to the issuance of the decree by Judge Kent, the Salt River Project was completed and water rights contracts were entered into between the Federal Government and the users who made up the Salt River Valley Water Users' Association.

Even though continuing jurisdiction has been retained under *Hurley* v. *Abbott*, such jurisdiction has been rarely used during the past 70 years. In 1955, however, the Users' Association sought to enlarge the Kent Decree by adjudicating the rights of the White Mountain Apache Tribe. This action was removed to federal court in 1957 and remained there for 9 years until it was dismissed by Judge Craig in 1966. *Hurley* v. *Abbott*, 259 F.Supp. 669 (1966).

During the past 70 years, the character and size of the Salt River Project has changed dramatically. Several additional dams have been constructed and many agreements have been executed with or approved by the United States Government.

The Salt River Project, like other federal reclamation projects, is a unique product of the particular circumstances existing in this region and the federal law under which it was authorized. It is also important to note that the Federal Government retains significant supervisory authority over the Project as a result of the 1917 agreement (copy attached as Exhibit B). Furthermore, the United States retains title to all of the diversion structures and water delivery works as is evidenced in section 18 of the contract dated November 17, 1935 (copy attached as Exhibit C).

The other significant federal interest on the Salt River watershed is in the ownership of land and water rights by the United States, both in its own right (forest lands and Bureau of Land Managment lands) and on behalf of five Indian tribes (the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe, the Fort McDowell Indian Tribe, the White Mountain Apache Tribe, and the Gila River Pima-Maricopa Indian Community). The watershed of the Salt River above Granite Reef Dam encompasses approximately 6,300 square miles. Of that area approximately 49 percent is land which is held in trust by the United States for federally recognized Indian tribes (approximately 3,058 square miles). Approximately 47 percent of the total area is national forest land or Bureau of Land Managment land (approximately 2,974 square miles). Ninety-six percent of the watershed or 6,032 of 6,300 square miles is in federal ownership.[5]

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[5] See affidavits appended to this memorandum as Exhibits D, E, F, and G.

In light of the above, it can be seen that this proceeding involves significant questions of federal law and federal property rights. The water rights of the members of the Users' Association are substantially dependent upon the federal reclamation laws. The rights of the Association itself, against the United States and others, are dependent upon contracts that have been executed by or approved by the Federal Government pursuant to federal law. Finally, the reserved water rights of the Federal Government and the Indian tribes are wholly dependent on federal law and in no way are related to the laws of the State of Arizona. *Cappaert* v. *United States, supra.*

Any court which hears this case will be called upon to decide numerous and significant issues of federal law. This factor militates against state court jurisdiction. Moreover, it is important to note that *Akin,* in which the Supreme Court deferred to state jurisdiction, involved federal questions and claims which were much less significant than those present in this case.[6]

In this proceeding the Indian claims and the non-Indian federal claims will far outweigh the private claims to water which currently exist above Granite Reef Dam. As to claimants below Granite Reef Dam, such as the petitioner Users' Association, the conflicts between the federal claims and the private claims will revolve around the federal law. Other downstream users, such at the cities and other irrigation districts, will also claim rights to the Salt River water and those claims will be based, to some extent, on Salt River Project contracts, the validity of which depend upon federal reclamation law.

In summary, if this federal court decides to remand this proceeding to state court, the result will be contrary to that envisioned by the Supreme Court in *Akin.* If remanded, this dispute will place in the hands of a state judge signifi-

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[6] See Trelease, *Federal Reserved Water Rights Since PLLRC,* 54 Denver Law Journal 473 (1977), reprinted in 15 Public Land and Resources Law Digest 218 (1978), at pages 231-232.

cant and complicated issues of federal law, whereas the issues involving state law and private rights are relatively insignificant. This fact leads to the conclusion that the state forum is simply inappropriate for this case under the *Akin* analysis. Accordingly, it is the position of the United States that "a carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counselling against that exercise . . . " dictates that this federal court should decide to retain jurisdiction over this proceeding. *Akin, supra,* at 818.

2. *Forum Non Conveniens.*

The Association, the movant in the state proceedings, is, as the Court is well aware, the supplier of water for the Phoenix area. The Association is headquartered here in Phoenix. Many of the attorneys who eventually will appear in this matter are located in Phoenix. The only factor which would militate toward deciding that the federal court is an inconvenient forum, *vis-a-vis* the state court, is the location of relatively few non-Indian claimants who live some distance from Phoenix. However, this Court is authorized to sit at Globe, and the Court (or any Master who may be appointed) could well schedule certain hearings for Globe if it felt the necessity to do so.

Hence, the *forum non conveniens* factor has no application to the situation of the parties to this matter since the federal court is just as convenient a forum as is the state court.

III. Tribal sovereignty, the tribes' access to federal court pursuant to 28 U.S.C. 1362, and the federal court's obligation to exercise its jurisdiction require a decision against dismissal of the tribes' complaints.

If the Court does not accept the arguments made in sections I and II of this brief, then tribal sovereign immunity, Congress' specific grant of federal court jurisdiction over actions brought by Indian tribes (28 U.S.C. 1362), and the

heavy obligation of federal courts to exercise that jurisdiction require that the district court retain jurisdiction in the declaratory and injunctive actions filed by the tribes. The tribes still possess those inherent sovereign powers which they have not yielded, which Congress has left intact, and which are not inconsistent with their dependent status. *See, United States* v. *Wheeler*, 435 U.S. 313 (1978). *Wheeler* confirms the principle that an Indian tribe is not an arm of the Federal Government, but is a separate, albeit dependent, sovereign. That principle is significant here because it refutes the argument that the tribes' immunity to suit is subsumed in the Government's waiver of sovereign immunity in the McCarran Amendment. The McCarran Amendment waives only the Government's immunity to suit in a general adjudication; it makes no mention of tribal sovereign immunity. In *Puyallup Tribe v. Washington Department of Game*, 433 U.S. 165 (1977), the Supreme Court considered tribal sovereign immunity and flatly stated that:

> Absent an effective waiver or consent, it is settled that a state court may not exercise jurisdiction over a recognized Indian tribe. 433 U.S. at 172.

Tribal sovereign immunity is subject to the plenary authority of Congress, and the immunity can be waived only by an express and unequivocal intention of Congress to do so. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). *Martinez* concerned a challenge to a tribal membership ordinance brought in federal court by a person seeking admission to the tribe.

Jurisdiction was alleged to be under the Indian Civil Rights Act (25 U.S. 1301, *et seq.*). That Act imposed certain constitutional standards on the conduct of tribal government and made available the writ of *habeas corpus* to any person to "test the legality of his detention by order of an Indian tribe." 25 U.S.C. 1303. The Supreme Court held that dismissal of the challenge to the membership ordinance was required because the tribe was immune from suit. The

Court reasoned that Congress must unequivocally authorize suit against the tribe, but the Indian Civil Rights Act only waives tribal immunity for *habeas corpus* proceedings:

> Nothing on the face of Title I of the ICRA purports to subject tribes to the jurisdiction of federal courts in civil actions for injunctive or declaratory relief. Moreover, . . . a habeas corpus action . . . can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit. 436 U.S. at 59.

Akin construes the McCarran Amendment, and holds that Indian water rights held in trust by the United States are subject to adjudication in state court. But the "special consent to jurisdiction" contained in the McCarran Amendment (*Akin*, 424 U.S. at 812 n. 20) does not waive the tribes' immunity, and to the extent that Arizona relies on jurisdiction over the tribes in the state adjudication, the state action is defective and should be dismissed as to them.

The McCarran Amendment has no effect on the prerogative of the tribes to seek affirmative relief in federal court notwithstanding actions in state court against the United States as trustee of tribal water rights. *Akin* holds that the federal courts retain jurisdiction pursuant to 28 U.S.C. 1331 and 1345 to adjudicate those rights. Because Congress has granted Indian tribes the prerogative of bringing any claim the United States could have brought on their behalf as trustee (28 U.S.C. 1362; *Moe* v. *Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976)), the McCarran Amendment must be deemed to have the same effect on jurisdiction under 28 U.S.C. 1362 as it has on §§1331 and 1345. Thus, the Supreme Court in *Akin* found that the Amendment "in no way diminished federal district court jurisdiction . . . and that the District Court has jurisdiction to hear this case." *Akin, supra*, at 809. Certainly, if the Indian Civil Rights Act is narrowly construed to bar civil

rights actions against a tribe, the McCarran Amendment, which on its face makes no mention of Indian property rights, cannot be used to justify dismissal of the tribes' independent efforts in federal court to protect their water resources.

Although finding that Indian water rights are subject to adjudication in state court in *Akin*, the Court suggests that slightly different facts could have warranted the district court retaining jurisdiction of the Government's case. The Court acknowledges " a heavy obligation to exercise jurisdiction," and suggests that more extensive proceedings in federal court, less extensive involvement of state water rights, and the demonstrated inadequacy of state proceedings to resolve federal claims would justify a different outcome. *Akin, supra*, at 820. Most importantly, the Court specifically declined to decide whether dismissal of federal court proceedings would be warranted if litigation had been initiated in the federal court by a private party. *Akin, supra*, at 820 n. 26. The tribes have proceeded in federal court on their own initiative. They did so prior to enactment of Senate Bill 1239, though subsequent to the mailing of notice by the Salt River Project in the state administrative action.

This Court ought not to dismiss the complaints filed by the tribes for declaratory and injunctive relief. Thus, an application of the factors used by the Supreme Court in *Akin* in deciding that federal reserved rights should be adjudicated in state court to the facts in this case dictates the opposite conclusion. Not one of the factors discussed in this brief favors the remand of the state proceedings. Each one favors the retention of these proceedings in federal court.

IV. Additional considerations counselling retention of the removed proceedings.

1. *Federal involvement in other state proceedings involving the same issues.*

The Federal Government and the Indian tribes are not

involved in virtually any other state proceedings involving the issues presented by this litigation. Conversely, there are many cases currently pending in federal court in the State which do involve them: *United States* v. *City of Tucson*, Civil No. 75-39 TUC JAW, and *Papago Tribe* v. *City of Tucson*, Civil No. 75-51 TUC JAW; *Gila River Indian Community* v. *ASARCO*, Civil No. 78-145; *United States* v. *J. Ed Smith*, No. 78-1869, C.A. 9; and *Arizona* v. *California*, No. 8 Original, United States Supreme Court. The only exception is *Hurley* v. *Abbott*, *supra*, in which the state court assumed the jurisdiction of the territorial court. But for 9 years even *Hurley* v. *Abbott* was in federal court. See 259 F.Supp. 669 (D. Ariz. 1966). In addition to these cases, the Navajo Tribe has filed a complaint in federal court seeking a general adjudication of the Little Colorado watershed; the San Carlos Apache Tribe has filed a complaint seeking a declaration of its water rights in the Salt River watershed; the Fort McDowell Indians have filed an action seeking a declaration of their rights in the Verde River; and the Gila River Indians have filed an action seeking an adjudication of their rights in the San Pedro River. In summary, the United States and the tribes have not participated in state proceedings they are, on the other hand, litigating and have litigated water rights issues almost exclusively in federal court.

2. *Judicial economy and piecemeal adjudications.*

These factors are reverse sides of the same coin. The Supreme Court in *Akin* considered that it would be a waste of judicial resources to have two separate proceedings going forward concurrently concerning the same *res*. That problem is not present here since there is just one proceeding and since the question is where it will be heard.

The State and the Association have argued that the trial of this matter would put a tremendous burden on this Court. First of all, this is not the sense in which the Su-

preme Court in *Akin* discussed the term "judicial economy." It is demeaning to this Court to argue that it ought not to retain jurisdiction of the matter because of the burden it would impose on the Court.

Secondly, the State and the Association have exaggerated to an extensive degree the actual complexity of the matter. They argue that 12,000 landowners have been mailed notices of these proceedings. Yet as of August 31, 1979, only 1,092 private claims have been filed. The extent of the federal landholdings in the watershed area, and by analogy the likely extent of the reserved rights appurtenant to those landholdings, far outweigh the relatively small state and private claims to water.

If the trial of this matter would be burdensome to this Court, there are measures that could be employed to ameloriate that burden. One step that could be taken, if necessary, would be the appointment of a special master to take evidence. Judicial economy would not be served by the remand of these proceedings to state court. The task of adjudicating the water rights would simply be transferred.

3. *Federal policy supports the dismissal of the United States and the Indian tribes from the state proceedings.*

The Association's and the State's briefs in reply to the brief of the White Mountain Apache Tribe's memorandum imply that federal policy supports their assertion that federal and Indian rights should be adjudicated in state court. It is anamolous for the State and the Association to argue what the federal policy is on these matters. The Court in *Akin, supra,* at 819, stated that: "The clear federal policy evinced by that legislation is the avoidance of piecemeal adjudication of water rights in a river system." There is nothing in this policy or the McCarran Amendment which

requires or even favors adjudication of federal and Indian reserved rights in state court. Later, in the same paragraph cited above, the Court recognizes only the *availability* of state systems of adjudication.

President Carter in his water policy initiative transmitted to Congress on June 6, 1978, stated the following:

> These issues [the quantity and priority of Indian reserved rights] can, of course, be resolved through judicial proceedings. This is a time consuming and costly process. The president strongly favors a negotiation process instead. Where negotiation is unsuccessful, the rights should be adjudicated in the Federal courts.

The federal policy on these issues may be summarized as follows. Congress has declared that it is not in favor of piecemeal adjudications. The President has declared that he is in favor of negotiated solution if that course is feasible and, if not, then he believes that federal and Indian water rights should be adjudicated in federal court. There is nothing in federal policy which favors the adjudication of federal and Indian reserved rights in state court.

4. *The federal court is better equipped to resolve the conflict between state and federal law.*

Arizona groundwater law, in contrast to federal law, effectively precludes adjudication of groundwater claims. In its current form, Arizona law recognizes no priority or quantifiable, appropriative right in groundwater. Moreover, the law does not acknowledge in any meaningful way the hydrological interrelation between surface and groundwater supplies, a factor well established in modern hydrology and integral to the Supreme Court's decision in *Cappaert, supra*. These difficulties with Arizona law must be addressed whether the adjudication takes place in state or federal court.

Although the law of reserved water rights is derived exclusively from federal common law, and is not dependent on state law or procedure (*Cappaert, supra,* at 145). Ordinarily, a state court has the authority to interpret and apply federal law, subject to Supreme Court review. The Supreme Court asserted in *Akin* that:

> Mere subjection of Indian rights to legal challenge in state court, however, would no more imperil those rights than would a suit brought by the Government in district court for their declaration, a suit which, absent the consent of the [McCarran] Amendment, would eventually be necessitated to resolve conflicting claims to a scarce resource. 424 U.S. at 812.

But the conflict between reserved rights and Arizona water law is much more severe than that Colorado law as addressed by the Supreme Court. *United States* v. *District Court in and for the County of Eagle,* 401 U.S. 520 (1971); *United States* v. *District Court in and for Water Division No. 5,* 401 U.S. 527 (1971); *Akin, supra.* Although Colorado did not include reserved rights in its own law, reserved rights were compatible with Colorado law because they could be given a priority date, quantified and integrated into the existing state water rights administration system. That is a task which admittedly can be accomplished by either a state or federal court. But there is no similar means of accommodating reserved rights in Arizona where state law does not recognize the interrelation of ground and surface water, and where neither priority nor quantity can be established or enforced under existing state law. These circumstances have contributed substantially to the severe depletion of groundwater. If an Indian reserved right in groundwater is sustained in this litigation, the court will have to fashion an enforcement scheme which will meld the

existing state system with federal law. In our view, this difficult and complex task is precisely the sort of problem which the federal courts—as opposed to state courts—were intended to address.

V. This action was properly removed.

The central issue discussed above is whether federal and tribal reserved water rights should be litigated in federal or state court. However, we will now turn to a discussion of whether this action is properly before the Court upon removal from the State Land Department.

Any of the tribes which were mailed notices in the state administrative proceedings or the United States could have filed a general adjudication in this Court, as could the Association and the State. The jurisdictional basis for the tribal action would be 28 U.S.C. 1362, and for the action of the United States it would be 28 U.S.C. 1345. The jurisdictional basis for a general adjudication filed by the Association or the State would be 28 U.S.C. 1331. Hence, the present proceeding is one which this Court would have jurisdiction over originally as required by the terms of 28 U.S.C. 1441(a). *Tennessee* v. *C.C. Manifest of Tennessee,* 362 F.Supp. 759 (D.C. Tenn. 1973).

Despite the State's and the Association's argument to the contrary, there is no express congressional prohibition of removal of adjudications brought under the McCarran Amendment. The legislative history cited in their memoranda concerning the deletion of a section of the bill that would provide for removal does not rise to the dignity of an *express prohibition* of removal as required by the terms of 28 U.S.C. 1441(a).

The State and the Association also make much of the fact that none of the tribes sought or received the concurrence in the removal of all the persons named as potential claimants in the state administrative proceedings. The short answer to that contention is that such concurrence is not required in these proceedings. Former Chief Judge

Breitenstein of the Tenth Circuit Court of Appeals has recently discussed the status of parties in water adjudications in the case of *State of New Mexico* v. *Molybdenum Corp.*, 570 F.2d 1364 (C.A. 10, 1978):

> Intervention ordinarily cannot provide jurisdiction lacking for the main cause. See *Begg* v. *City of New York*, 262 U.S. 196, 198-199, 43 S.Ct. 513, 67 L.Ed. 946, and *Bantel* v. *McGrath*, 10 Cir., 215 F.2d 297, 299. The rule does not apply here. The United States was a named defendant and was realigned as a plaintiff. We must determine the "principal purpose" of the suit and align the parties accordingly. *Indianapolis* v. *Chase National Bank*, 314 U.S. 63 69, 62 S.Ct. 15, 89 L.Ed. 47. As a practical matter, a general water adjudication is comparable to interpleader. New Mexico asks that all water users assert their claims and have them determined. The intent is to obtain a complete ascertainment of all existing rights. *Pacific Live Stock Co.* v. *Oregon Water Board*, 241 U.S. 440, 448, 36 S.Ct. 637, 60 L.Ed. 1084. Each person is interested both in the determination of his own claim and in the extent and validity of other claims. Ibid. at 449, 36 S.Ct. 637. In the situation presented, no good purpose is served by quibbling whether a party is a plaintiff or defendant. The United States has entered the suit as a claimant asking that its rights be determined. This action confers federal jurisdiction under § 1345. 548 F.2d at 1366.

Here, each party's claim in the water is adverse to every other claimant's. No good purpose is served by quibbling whether a party is a plaintiff or defendant. Each party has the right to remove an action such as this where he is a defendant *vis-a-vis* each other party to this matter.

Finally, the State and the Association argue that no federal question appears from the face of the notice and, hence, that the state proceedings are not removable now. The Supreme Court considered the well-pleaded complaint rule in regard to a complaint filed by the Oneida Indian Nation to establish its aboriginal rights to certain lands in

New York. *Oneida Indian Nation* v. *County of Oneida*, 414 U.S. 661 (1974). The Oneida Tribe filed suit seeking possession of certain aboriginal lands in New York. The district court ruled that under the well-pleaded complaint rule, the cause of action was under state law and that the fact that it might have been necessary to interpret federal law or treaties in deciding the case was not sufficient to invest the court with federal question jurisdiction. The court of appeals affirmed the district court.

The Supreme Court, however, held that "we are of the view that the complaint asserted a current right to possession conferred by federal law, wholly independent of state law" and, hence, that the action could be maintained. *Oneida, supra,* at 666. Here, the tribal reserved rights are based on federal law, wholly independent of state law. There is no reason not to extend the rationale of *Oneida, supra,* to the present situation.

In this regard, it should be noted that 28 U.S.C. 1446(b) provides that "[if] the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." Hence, if this Court rules that the federal questions have not yet appeared in the case, when and if the United States or a tribe files a claim asserting a reserved right under federal law, the action would then be removable.

Conclusion

The federal common law of reserved rights in ground water had its genesis in *United States* v. *Cappaert, supra,* even though it is clearly foretold in the *Winters* and *Arizona* v. *California* cases. There is no reported decision, either federal or state, which applies *Cappaert* to the reserved rights of Indian tribes to ground water. Hence, this is a developing area of federal common law. One of the purposes for the creation of the federal court system was to

insure that of the interests of the Federal Government would be litigated in federal rather than state courts. The rationale for the creation of the federal court system was that state courts would be more protective of local rather than national interests.[7] This discussion is not intended, nor should it be interpreted, as a criticism of the Arizona courts. It is, on the other hand, a recognition of a simple fact of political life that the founding fathers recognized. This Court should retain jurisdiction of this matter so that important questions of federal common law may be determined by the courts created precisely for that purpose.

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[7] See Federalist No. 80 for a discussion of the framers' intent. *The Federalist*, Cooke (Editor), Wesleyan University Press (1961) pages 534-541.

For the reasons stated above, the United States as *amicus curiae* suggests to the Court that the motions to dismiss the complaints of the tribes in the declaratory relief actions be denied, that the state proceedings be dismissed as to the United States and the tribes or, alternatively, that the present proceedings be retained in federal court.

Respectfuly submitted,

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APPENDIX A

AGREEMENT BETWEEN UNITED STATES OF AMERICA AND SALT RIVER VALLEY WATER USERS' ASSOCIATION

DATED JUNE 25, 1904

THESE ARTICLES OF AGREEMENT

Made and entered into this 25th day of June, one thousand nine hundred and four (1904), by and between the United States of America, acting in this behalf by Ethan A. Hitchcock, Secretary of the Interior, PARTY OF THE FIRST PART, and the Salt River Valley Water Users' Association, a Corporation duly organized and existing under the laws of the Territory of Arizona, PARTY OF THE SECOND PART, their successors and assigns,

WITNESSETH,

That Whereas, the Salt River Valley Water Users' Association is a corporation organized and existing under the laws of the Territory of Arizona for the purpose mentioned in its Articles of Incorporation, a copy of which is appended to this memorandum (which is marked "Articles of Incorporation referred to in the attached memorandum, and attested by the signature of the Honorable the Secretary of the Interior of the United States of America, and of the President of the Salt River Valley Water Users' Association, for the purpose of identification") and are for every purpose of the interpretation, construction and consideration of this memorandum, and of the rights of the parties hereunder to be deemed, held, read and considered as if fully written out or printed herein, and deemed a part hereof.

And whereas the lands embraced within the district of lands described in Section three (3) of Article IV of said Articles of Incorporation are naturally desert and arid and incapable of proper cultivation without irrigation, and unless the waters of the Salt and Verde Rivers in Arizona and their tributaries be impounded and the flow thereof otherwise regulated and controlled will, to a greater or less extent, remain unreclaimed, unfit for habitation and uncultivated, in which condition they, or a great part thereof, are now.

And whereas the Secretary of the Interior of the United States of America contemplates the construction of certain irrigation works under the provisions of an Act of Congress entitled "An Act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, in and across Salt River at a point about 32 miles up the course of said Salt River above the confluence of the Verde River and said Salt River, said point being near the mouth of Tonto Creek, for the purposes of there impounding the waters of said Salt River and otherwise regulating and controlling the flow of water therein, and works necessarily or conveniently incident thereto, for the use of said waters for the reclamation of arid lands along the course of said Salt River and,

Whereas the incorporators of said Salt River Valley Water Users' Association and its shareholders are, and under the provisions of its Articles of Incorporation must be, owners and occupants of lands and the appropriators of water from said Salt River and said Verde River and their respective tributaries for the irrigation thereof, and in addition thereto such incorporators, shareholders and constituents and their assigns or successors must initiate rights to the use of water from the said proposed irrigation works, to be constructed by the said Secretary of the Interior, as soon as such rights may be initiated, and thereafter complete the acquisition thereof in the manner and upon the terms and

conditions to be prescribed therefor by the Secretary of the Interior, which rights shall be, and thereafter continue to be, forever appurtenant to designated lands owned by such shareholders and constituent members, and

Whereas neither the relative priority and extent of the individual appropriations of such water heretofore made by said incorporators, shareholders and constituent members, nor the proportion of the entire waters of said water courses that has been in the aggregate appropriated by them, and which are now vested rights, have been ascertained or determined, but said incorporators, shareholders and constituent members of said Association have agreed, amongst themselves, by the terms and provisions of said articles of incorporation, upon the rules and principles by and upon which the relative priority and the extent of their several appropriations and vested rights to the use of such waters shall be determined.

1. Now, therefore, if the said Secretary of the Interior shall authorize and shall cause the construction of said irrigation works, then in the determination of the relative rights of the shareholders of said Association, and of their respective rights to the use of water acquired from the Government under said act of Congress, the rules and principles set out in said articles of incorporation, for such determination, shall be deemed the established rules and principles for that purpose.

2. That only those who are, or who may become, members of said Association, under the provisions of its articles of incorporation shall be accepted as entryman or applicants for rights to the use of water impounded, developed or the supply of which is or may be regulated or controlled by said proposed irrigation works.

3. That the aggregate amount of such rights to be issued shall, in no event, exceed the number of acres of land capable of irrigation by the total amount of water available for the purpose, being (1) the amount now appropriated by the shareholders of said Association, and (2) the amount to be

impounded and developed in excess of the water now appropriated. The Secretary of the Interior shall determine the number of acres so capable of such irrigation as aforesaid, his determination to be made upon due and expert consideration of all available data, and to be based upon and measured and limited by the beneficial use of water.

4. That the payments for the reservoir rights to be issued to the shareholders of said Association, under the provisions of said Act of Congress, shall be divided into not less than ten equal annual payments, the first whereof shall be payable at the time of the completion of said proposed reservoir, or within a reasonable time thereafter, and after due notice thereof by the Secretary of the Interior to the Association. The cost of said proposed irrigation works shall be apportioned equally per acre among those acquiring such rights.

5. The said Salt River Valley Water Users' Association agrees that it will promptly collect or require prompt payment in such manner as the Secretary of the Interior may direct, and hereby guarantees the payments, for that part of the cost of irrigation works, which shall be apportioned by the Secretary of the Interior to its shareholders, and promptly pay the sums collected by it to the Receiver of the local land office for the district in which said lands are situate, that it will promptly employ the means provided and authorized by the said Articles of Incorporation for the enforcement of such collections and will not change, alter or amend its Articles of Incorporation in any manner whereby such means of collection, or the lien given to it by the shareholders to secure the payment thereof or of any assessments contemplated or authorized thereby, shall be impaired, diminished, or rendered less effective, without the consent of the Secretary of the Interior.

6. The United States shall in no manner be responsible for the sums collected by said Association until they have been paid into the hands of the receiver of the local land office, as provided by the law, and in accordance with such regulations as may be prescribed by the Secretary of the Interior.

7. That for the purpose of enforcing said collections, the Association will adopt and enforce proper By-Laws, subject to the approval of the Secretary of the Interior, and not change them so as to in anywise impair their efficiency for said purpose, and will otherwise do any and all things it is authorized and empowered to do in the premises.

8. That the Association will adopt and enforce such rules and regulations as it is authorized by its Articles of Incorporation to adopt and enforce, concerning the use of water by its shareholders and concerning the administration of the affairs of the Association, to effectually carry out and promote the purposes of its organization, within the provisions of said Articles of Incorporation, which rules and regulations shall be subject to the approval of the Secretary of the Interior. That if the Association fail to make and adopt such rules and regulations then the Secretary of the Interior may prescribe them but in such event it is understood that the Secretary of the Interior shall impose no rule or regulation interfering with any vested right of the shareholders of the Association as defined or modified by said Article of Incorporation.

9. Persons who are not now members of the Association but who may be the owners or occupants of land within the Reservoir District described in section 3 of Article IV, or of added lands provided for in that section and to whom rights to the use of water, from the proposed reservoir or irrigation works, may be issued, may, at the designation of

the Secretary of the Interior, become members of the Association by subscribing to the stock thereof, and upon the compliance with the other conditions prescribed for such membership.

10. It is understood that in all the relations between the Government and this Association and the members of the Association, the rights of the members of the Association are to be defined and determined and enjoyed by and under the provisions of the said Act of Congress and of other Acts of Congress on the subject of the acquisition and enjoyment of the rights to use water, and by the laws of Arizona where not inconsistent therewith, where such rights have vested, modified, if modified at all, by the provisions of the Articles of Incorporation of said Association.

11. Nothing contained in this memorandum, or to be implied from the fact of its execution, shall be construed, held, or deemed to be an approval by the Secretary of the Interior, nor an adoption by him, of the Articles of Incorporation of said Association, in all their details as the form of organization of water users contemplated and authorized by Section 6 of the said Act of Congress of June 17th, 1902, but such approval and adoption is expressly reserved until the conditions authorizing such approval and adoption prescribed in said act shall have arisen. And when the Secretary of the Interior shall make, approve, and promulgate rules and regulations for the administration of the water to be supplied from said proposed irrigation works, such rules and regulations, and such modifications thereof as the Secretary may, from time to time, approve and promulgate, shall be deemed and held to be obligatory upon this Association as fully and completely and to every intent and purpose, as if they were now made, approved, promulgated and written out in full in this memorandum, and are to be read and construed as if so done.

In witness whereof, the undersigned have hereunto subscribed their names and affixed their seals the day and year first herein written.

(Sgd) ETHAN A. HITCHCOCK,
Secretary of the Interior,
for and on behalf of the United States
of America
PARTY OF THE FIRST PART

Witness:
(Sgd.) W. SCOTT SMITH
(Seal)
S.R.V.W.U. Ass'n.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION
PARTY OF THE SECOND PART

By (Sgd) B. A. Fowler,
President
(Sgd) Frank H. Parker
Secretary.

Witness:
(Sgd) Joseph H. Kibbey
(Sgd) C. G. Williams

Territory of Arizona }
County of Maricopa. } ss.

Before me, Susie Schermerhorn, a Notary Public in and for the County of Maricopa, Territory of Arizona, on this day personally appeared B. A. Fowler, President of the Salt River Valley Water Users' Association and Frank H. Parker, Secretary of the Salt River Valley Water Users' Association, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged the execution of such instrument as the free act and deed of the said Salt River Valley Water Users' Association, by each of them voluntarily executed.

Given under my hand and seal of office, this 25th day of June, one thousand nine hundred and four.

(Sgd) SUSIE SCHERMERHORN

(Seal) Notary Public.

My commission expires the 13th day of February, 1907.

APPENDIX B

CONTRACT BETWEEN UNITED STATES OF AMERICA AND SALT RIVER VALLEY WATER USERS' ASSOCIATION

DATED SEPTEMBER 6, 1917

THIS MEMORANDUM OF AN AGREEMENT, made by and between the UNITED STATES OF AMERICA, acting in this behalf by the Secretary of the Interior under the provisions of the act of June 17, 1902 (32 Stat., 388), and of acts amendatory thereof and supplementary thereto, together constituting the reclamation law, of the first part, and the SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation, duly organized and doing business under the laws of the Territory (now State) of Arizona, of the second part and hereinafter for the sake of brevity of expression designated as the "Association" WITNESSETH:

FIRST: This agreement is to be held and deemed supplementary to the agreement made by and between the same parties, the memorandum whereof is dated June 25th, 1904, and it is understood and agreed that that agreement shall not be held or deemed in any wise to be affected, modified, changed or abrogated, in whole or in part, by this agreement, except as it may be done by the express terms of this agreement, or by reason of irreconcilable inconsistencies between the terms of the said agreement of June 25th, 1904, and the terms of this present agreement, and then only in those particular provisions so expressly hereby affected, modified, changed or abrogated, or between which there is such irreconcilable inconsistency

manifested, in which case and so far only, the provisions of this agreement shall prevail over and to that extent affect, modify, change or abrogate the provisions of said agreement of June 25th, 1904.

Second: In consideration of the doing of the things, and of the full and prompt performance by the Association of all the covenants and agreements hereinafter contained, which it hereby agrees that it shall do, perform and observe, and subject to all the conditions, terms, limitations and obligations hereinafter imposed upon it by the provisions of this agreement, the United States agrees to and will as soon after the signature of this agreement as may be practicable, turn over to and vest in the said Association, the care, operation and maintenance of the irrigations works known as the Salt River Project, situate in the counties of Gila, Pinal and Maricopa, consisting generally of the Roosevelt Dam, the Granite Reef Dam, irrigation canals, latorals and ditches, and other conduits, gates, pipes, power plants, power houses, buildings and other structures of every kind, transmission, telegraph and telephone lines, wires, pumps, machinery, tools and appliances and all property of whatsoever kind, real, personal or mixed, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with the said Salt River Project, wheresoever said property may be situated, and as well, all water rights and franchises, and rights to the storage diversion and use of water for irrigation or other purposes, water power, electric power and power privileges, with such right of possession of all thereof, as shall be necessary or convenient for the care, operation and maintenance of said project by said Association, as hereinafter provided. And said Association shall from the time of the taking over of the care, operation and maintenance of said project thenceforward have and receive to its own use and benefit, all the rents,

issues, profits, revenue and income, including all income from power and power privileges growing out of or arising from the operation and maintenance of the project and every part thereof by it.

Third: The Association agrees to accept the transfer to it of the care, operation and maintenance of said project, and that it will care for, operate and maintain the same and every essential part thereof in full compliance with law and the provisions of this agreement, during all the time it shall have such charge of the same under the provisions of this agreement, in such manner that the same and every part thereof shall remain in as good and efficient condition, and of equal capacity for the storage development, diversion and distribution of irrigation water, and for the service of electric energy as the same is now, as its own cost and without cost to the United States, provided that said Association shall not be required to maintain the capacity of the Roosevelt Reservoir so far as that may be diminished naturally by the deposit of silt therein by the Salt River, Tonto Creek and other tributaries thereto, and provided further that the Association shall not be required to make any replacements, renewals or repairs which may be made necessary by injury to or destruction of said works or an essential part thereof by public enemies of the United States or by the United States itself as a war measure.

That it will promptly pay all such cost of the care, operation and maintenance of the project as it is incurred. That it will make no substantial change in any of said works, without first having obtained the consent thereto, to be expressed in writing, of the Secretary of the Interior. It may, however, construct additional works at its own cost without the necessity of procuring the assent of the Secretary of the Interior of the United States, provided that such

additional works shall not in any wise impair or diminish the present efficiency or adequacy of the project for the purposes for which it has been designed, constructed and acquired.

Fourth: The Association shall repay to the United States the cost of the construction, and acquisition otherwise, of said project promptly and without default.

Such cost shall be computed on the basis of a net balance due the Government on that account on the 1st day of January, 1917, of $10,279,190.98. To this there shall be added any sums expended by the United States, or the cost of which it shall have incurred, on account of the construction, care, operation and maintenance of said project during the time elapsing between said 1st day of January, 1917, and the date upon which the Association shall take over the care, operation and maintenance thereof, under the provisions of this agreement. If the expenditures for operation and maintenance of the irrigation system shall be greater or less than the receipts from rentals up to the time when the project is turned over to the Association, the difference shall be paid to the United States by the Association in case of a deficit, or the difference shall be credited on the first installment in case of a surplus. Such adjustment to be made December 1, 1917.

The exact amount of the balance of such construction cost shall be computed to the date of the taking over by the Association of the care, operation and maintenance of said project, and then stated in writing by the Secretary of the Interior to the Association, and the amount so stated shall be deemed to be the net cost of said project which the Association agrees to pay to the United States.

Such payments shall be made in annual installments as follows:

Two	per	cent	thereof	on	or	before	December	1st,	1917
"	"	"	"	"	"	"	"	"	1918
"	"	"	"	"	"	"	"	"	1919
"	"	"	"	"	"	"	"	"	1920
Four	"	"	"	"	"	"	"	"	1921
"	"	"	"	"	"	"	"	"	1922
Six	"	"	"	"	"	"	"	"	1923
"	"	"	"	"	"	"	"	"	1924
"	"	"	"	"	"	"	"	"	1925
"	"	"	"	"	"	"	"	"	1926
"	"	"	"	"	"	"	"	"	1927
"	"	"	"	"	"	"	"	"	1928
"	"	"	"	"	"	"	"	"	1929
"	"	"	"	"	"	"	"	"	1930
"	"	"	"	"	"	"	"	"	1931
"	"	"	"	"	"	"	"	"	1932
"	"	"	"	"	"	"	"	"	1933
"	"	"	"	"	"	"	"	"	1934
"	"	"	"	"	"	"	"	"	1935
"	"	"	"	"	"	"	"	"	1936

All without interest.

The Association shall pay all penalties which may be prescribed by the reclamation law for individual delinquencies.

The United States will and does reserve the means given to it by reclamation laws to enforce payments of installments of construction costs, and will at its option, in case of individual default, adopt, practice, and enforce them, as occasion may require, notwithstanding the undertaking of the Association to pay them.

Fifth: The Association will use its powers and resources, cumulatively, if necessary, including the power to withhold the delivery of water, to enforce the rules and regulations made by the Secretary of the Interior under the provisions of law, or by the Association under its Articles of Association and by-laws, for the proper care, operation and maintenance of the project and for carrying out the provisions of this agreement. If the enforcing of any such rules

and regulations shall require the collection of any charges, penalties or interest from persons holding land the title of which has not passed out of the United States, the Association shall report such cases to the Secretary of the Interior who will aid the Association in enforcing such collections by the cancellation of entries and water right applications or by any other means authorized by law. But failure on the part of the Secretary of the Interior to enforce such collections in such cases shall not relieve the Association from the obligations assumed by it under this agreement.

Sixth: The Association shall use all practical methods to insure the economical and beneficial use of irrigation water. It shall also hold the United States harmless as to any damages which may accrue to other land or property either within or without the reservoir district growing out of the care, operation and maintenance of the project by the Association.

Seventh: The project and all its works and those connected with it may be inspected from time to time under the direction of the Secretary of the Interior when he shall deem it necessary to ascertain if the provisions of this agreement are being carried out and observed by the Association in the care, operation and maintenance of the project. The cost of such inspections shall be charged to the Association and become due to the United States on March 1st of each year for expenditures on that account during the preceeding year.

Eighth: The Association shall maintain all the works turned over to it under the provisions of this agreement in proper operating condition and make proper delivery of irrigating water to each farm entitled thereto, or at least as near to the farm as the United States is now delivering such water.

Ninth: This Agreement may be cancelled or terminated by the Association on March 1st of any year upon not less than one year's written notice thereof to the Secretary of the Interior. It may be amended at any time, such amend-

ment to be ratified by a vote of the members of the Association in the same manner as the original agreement, and all amendments must be approved by the Secretary of the Interior before becoming effective. This agreement may be terminated by the United States acting in that behalf by the Secretary of the Interior, at any time, by written notice from the Secretary of the Interior in case the Association fails to carry out the provisions of law relating thereto, or of this agreement, in their true intent and meaning, or if the Secretary of the Interior shall reasonably believe that the security of the United States for the payment to it of said construction cost, is being impaired by the failure or neglect of the Association to properly care for and maintain the project. Upon the termination of this agreement, the Secretary of the Interior shall have the right to exercise all the powers in regard to the project which are vested in him by law, he may also at any time, after the execution of this agreement, take such action as he may deem proper, either by his own officers or through the Association, for the collection of any charges with the penalties and interest due the United States, which may be unpaid.

Tenth: The Association will keep reasonably accurate records of water deliveries and of crops raised under the project and as well such other records as are appropriate to the interests of the project as a whole. The forms to be used shall be subject to the approval of the Secretary of the Interior.

Eleventh: The performance and discharge of all valid and subsisting obligations and contracts affecting the care, operation and maintenance of the project now in effect between the United States and other parties, shall be and are hereby assumed by the Association, and shall be faithfully discharged, performed and carried out by it as long as the Association shall have the care, operation and maintenance of the project under the provisions of this agreement. The Association however reserves and the United States accords to it the right to any legal objections or defense to the va-

lidity of any obligations which the United States itself might have if this agreement had not been made, it being understood that the general assumption by the Association of the obligations of the United States in relation to the care, operation and maintenance of the project shall not impart to such obligations any degree of validity which they did not possess before this agreement was made. The Association agrees that all contracts which it may seek to execute for the sale or lease of power or power privileges covering a period of more than one year shall be subject to the approval of the Secretary of the Interior.

Twelfth: The proper officers or agents of the Association shall have full and free access at all reasonable times to the project books and official records of the United States relating to the construction, acquisition, care, operation and maintenance of the project, with the right at any time during office hours, to make copies of and from the same or any of them. The proper representatives of the United States shall have similar rights in respect to the books and records of the Association relating to the project and its care, operation and maintenance.

Thirteenth: The Secretary of the Interior reserves, and shall have the right, so far as the purport thereof may be consistent with the provisions of this agreement to make reasonable rules and regulations, and to add to or modify them, as may be proper and necessary to carry out the true intent and meaning of the law and this agreement.

Fourteenth: Nothing in this agreement shall be construed as affecting or interfering with the right or authority of the Secretary of the Interior to withhold delivery of water to the project to an extent corresponding to the area for which construction or building charges, with penalties and interest, have not been paid to the United States, as may be required by law and by the terms of this agreement and the Association shall upon direction of the Secretary of the Interior withhold delivery of water in such cases.

Fifteenth: The Association will in every practicable way cooperate with the Secretary of the Interior in carrying out the provisions of Section 2 of the act of Congress of May 19, 1916 (39 Stat., 130), providing for water rights for 631 Salt River Indian allotments of 10 acres each, and will cause to be performed such work as may be deemed necessary by the Secretary of the Interior to carry into effect the provisions of said law. The expense of such work will be met by the United States.

Sixteenth: If at any time before the full repayment to the United States of the cost of said project, said project or any essential part thereof shall be injured or destroyed by public enemies of the United States, or if said project or any essential part thereof, should as a war measure be injured, destroyed or rendered useless by orders of the United States or its officers, then further repayment of such construction cost shall be suspended and postponed until such time as said project shall have been restored to its state of efficiency and capacity just prior to such injury or destruction.

If by reason of invasion or occupation by enemies to the United States of territory of the United States, the water users (the constituent members of the Association), shall be prevented from the use of said project, or an essential part thereof, then during any period of such prevention of use, the repayment to the United States of construction cost under the provisions of this agreement, shall be suspended and postponed until such time as such use can be safely and uninterruptedly resumed.

Seventeenth: All agreements made, or that may hereafter be made by any of the members of the Association under the "Public Notice" heretofore issued relating to said project to repay to the United States the cost of said project at a different rate per acre or otherwise, than that to be fixed by the Secretary of the Interior under the provisions of this agreement, are to be deemed to be and they each and all, are hereby modified so that the cost of the construction

agreed thereby to be repaid shall conform to that fixed by the Secretary of the Interior under the terms of this agreement.

Eighteenth: No member of or delegate to Congress or resident Commissioner after his election or appointment or either before or after he has qualified or during his continuance in office, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing however herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in section 116 of the act of Congress approved March 4, 1909 (35 Stat., 1109.)

IN WITNESS WHEREOF, The undersigned have hereunto subscribed their names and affixed their seals this 6th day of September, 1917.

WITNESS:

E. C. Bradley (Sgd)

E. C. Finney (Sgd)

(Seal)

WITNESS:

Adah C. Troutman (Sgd)

A. B. Landreene (Sgd)

(Sgd) Alexander T. Vogelsang

Acting Secretary of the Interior for and on behalf of the United States of America PARTY OF THE FIRST PART.

SALT RIVER VALLEY WATER USERS' ASSOCIATION

John P. Orme (Sgd)

President

Chas. A. Vanderveer (Sgd)

Secretary

APPENDIX C

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Salt River Project
Arizona

CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND THE SALT RIVER VALLEY WATER USER'S ASSOCIATION PROVIDING FOR THE CONSTRUCTION OF BARTLETT DAM AND REPAIRS TO AND COMPLETION OF OTHER DAMS AND PROJECT CANALS

November 26, 1935

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1. THIS CONTRACT, made this 26th day of November, nineteen hundred thirty-five, pursuant to (a) the Act of Congress approved June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and (b) the Act of Congress approved April 8, 1935, Public Resolution No. 11, 74th Congress, hereinafter referred to as the Emergency Relief Appropriation Act of 1935, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, acting for this purpose by Harold L. Ickes, Secretary of the Interior, hereinafter styled the Secretary, and SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation created, organized and existing under and by virtue of the laws of the State of Arizona, with its principal place of business at Phoenix, Arizona, hereinafter referred to as the Association;

WITNESSETH:

Recitals

2. WHEREAS, the United States has heretofore constructed and turned over to the Association for operation and maintenance, certain dams, canals, laterals, power plants, transmission lines, and other works known as and designated Salt River project, and after the Association assumed the care, operation and maintenance thereof the Association constructed other and additional units of said project; and

3. WHEREAS, the Association now desires that the United States construct a dam and appurtenant works on the Verde River at the Bartlett site, approximately twenty-five (25) miles above the junction of the Salt and Verde Rivers, said dam to be so constructed as to create a reservoir of a capacity of approximately 200,000 acre feet, as a supplemental water supply of the Association for use on land under canals of the Salt River project now constructed, and the Association desires that the United States enlarge and complete the spillways at existing storage dams, and make other betterments to the irrigation works of the project as determined upon by the Chief Engineer of the Bureau of Reclamation in collaboration with the engineering representatives of the Association; and

4. WHEREAS, the sum of three million five hundred thousand dollars ($3,500,000.00) has been allotted to the Bureau of Reclamation out of funds made available by said Emergency Relief Appropriation Act of 1935 to aid in financing said project, it being understood that any money paid to the Bureau of Reclamation during the construction period hereunder on behalf of the Office of Indian Affairs for the Indians of the Salt River Indian Reservation shall also be available for construction work hereunder in addition to the funds available under said allocation of three million five hundred thousand dollars ($3,500,000.00), and

5. WHEREAS, the United States (for and on behalf of the Indians of the Salt River Indian reservation) and the Association have entered into a contract of date June 3, 1935, providing, among other things, for the apportionment of the costs of the aforesaid dam, hereby designated Bartlett Dam, on the basis of twenty per centum (20%) thereof to the United States and eighty per centum (80%) thereof to the Association, with the agreement that the United States, for and on behalf of the Indians of the Salt River Indian Reservation, shall have an interest in said dam, as therein provided.

6. NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to-wit:

Work to be Performed by United States

7. The United States will, subject to the provisions of Article twelve (12) hereof:

(a) construct the aforesaid Bartlett Dam at a point in the Verde River about twenty-five miles above the junction of the Verde and Salt Rivers so as to impound water to an elevation of one thousand seven hundred ninety-eight (1,798) feet above sea level, (U. S. Geological Survey datum), at which elevation the reservoir created by said dam will have an estimated storage capacity of from 175,000 to 200,000 acre feet;

(b) construct or enlarge and complete spillways at Horse Mesa Dam so as to provide spillway capacity of approximately one hundred fifty thousand (150,000) cubic feet per second;

(c) construct or enlarge and complete spillways at Mormon Flat Dam so as to provide spillway capacity of approximately one hundred fifty thousand (150,000) cubic feet per second;

(d) construct or enlarge and complete spillways at Stewart Mountain Dam so as to provide spillway capacity of approximately one hundred fifty thousand (150,000) cubic feet per second;

(e) lower the spillway gates at Roosevelt Dam a distance of approximately six (6) feet to provide spillway capacity of approximately one hundred fifty thousand (150,000) cubic feet per second;

(f) rehabilitate the Roosevelt power canal and the diversion works therefor; and

(g) make miscellaneous betterments to the project irrigation system as determined upon by the Chief Engineer of the Bureau of Reclamation in collaboration with the engineering representatives of the Association.

Expenditures under subdivision (f) and (g) of this article are to be made only if and to the extent, as conclusively determined by the Secretary, funds for such purpose are available in addition to funds required to complete the work contemplated in subdivisions (a), (b), (c), (d) and (e) of this article.

All of the foregoing work shall be accomplished in such manner as determined upon by the Chief Engineer of the Bureau of Reclamation in collaboration with the engineering representatives of the Association, it being understood and agreed nevertheless that the decision of said Chief Engineer shall be final and binding upon the parties hereto, in case they should be unable to agree upon the means or methods to be adopted in accomplishing the work under this contract.

Rights-of-way

8. The United States will, without cost to the Association therefor, utilize, in the performance of work under this contract, all canal or other right-of-way held by or reserved to the United States under acts of Congress or otherwise provided in the opinion of the Secretary such rights-of-way are legal and valid and available for the work contemplated

hereunder. Where rights-of-way so reserved or held by the United States are utilized hereunder, payments may be made by the United States to the owners of the lands for the value of their improvements destroyed in utilizing such right-of-way, and such disbursements for improvements will be included in the cost of the work to be performed hereunder. The Association shall convey to the United States without cost all right-of-way easements now owned or held by it, which, in the opinion of the Secretary, may be required for right-of-way purposes for the aforesaid works, or any part thereof. Where rights-of-way or other interests in land are required for any of the work to be performed by the United States hereunder, and such rights-of-way or other interests in land are not, in the opinion of the Secretary, reserved to or held by the United States under acts of Congress, or otherwise, or are not available for utilization in pursuance of this contract, the Association agrees that it will, from time to time, upon request of the Secretary, acquire title to such rights-of-way or other interests in land, and in turn convey same to the United States, in fee simple, or otherwise, as directed by the Secretary. The value of such property, so conveyed to the United States by the Association, will be determined by the Secretary, and the Association paid therefor in accordance with such determination.

Assumption of Operation and Maintenance by Association

9. Upon thirty (30) days' written notice from the Secretary of the completion of the work to be performed by the United States hereunder, or upon similar notice from the Secretary, the termination of such work through failure of Congress to make necessary appropriations therefor, or through the failure of the Federal Emergency Administration of Public Works, or other Governmental Agency, to make necessary allotment of funds for expenditures hereunder, the Association shall assume the care, operation and maintenance of the works to be constructed by the United

States hereunder, and thereafter the Association shall at its own cost and without expense to the United States care for, operate and maintain the same in such manner that such works shall remain in as good and efficient condition and of equal capacity for the storage, diversion, transportation and distribution of water as when received from the United States, reasonable wear and damage by the elements excepted. After the care, operation and maintenance of the aforesaid works have been assumed by the Association, the Association shall save the United States, its officers, agents and employees harmless as to any and all injury and damage to persons and property which may arise out of the care, operation and maintenance thereof.

Keeping Works in Repair

10. Except in case of emergency no substantial change in any of the works to be constructed by the United States and transferred to the Association under the provisions hereof shall be made by the Association without first having had and obtained the written consent of the Secretary and the Secretary's opinion as to whether any change in any such works is or is not substantial shall be conclusive and binding upon the parties hereto. The Association shall promptly make any and all repairs to and replacements of all works constructed hereunder or transferred to it under the terms and conditions hereof, which, in the opinion of the Secretary, are deemed necessary for the proper operation and maintenance of such works. In case of neglect or failure of the Association to make such repairs, the United States may, at its option, after reasonable notice to the Association, cause such repairs to be made and charge the actual cost thereof, plus fifteen per centum (15%) to cover overhead and general expense, to the Association. On or before September first of each year the United States shall give written notice to the Association of the amount expended by the United States for repairs under this article

during the fiscal year immediately preceding. Such cost, plus overhead and general expense as stated above, shall be repaid by the Association on December first immediately succeeding.

Inspection by the United States

11. The Secretary may cause to be made from time to time a reasonable inspection of the works constructed by the United States under the terms hereof to the end that he may ascertain whether the terms of this contract are being satisfactorily executed by the Association. The actual expense of such inspection in any fiscal year (July 1st to June 30th, inclusive) as found by the Secretary, shall be paid by the Association to the United States on December first of each year immediately following the fiscal year in which such inspection is made, and upon statement to be furnished by the Secretary. The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the Association for the purpose of inspection, repairs and maintenance of works of the United States, and for all other purposes.

Agreement by Association to Pay for Work

12. The Association agrees to pay the United States the actual cost incurred by the United States on account of the aforesaid works (including any disbursements made under the provisions of Article fourteen hereof); provided, that said amount shall be reduced in the amount of any moneys transferred to the Bureau of Reclamation by the United States Indian Service for and on behalf of the Indians of the Salt River Indian Resrvation on account of the construction of Bartlett Dam under contract between the United States and the Association of date June 3, 1935, or expended for such purposes out of Indians funds with the consent of the Secretary; provided, further, that the total net obligation of the Association hereunder shall not exceed six million dollars ($6,0000,000.00). The Association further agrees that in the event funds now allotted to the Bureau of Reclamation to finance the work to be performed by it

hereunder as aforesaid are not sufficient to complete such work, or necessary funds therefor are not appropriated by Congress and/or are not allotted for the purpose under the Emergency Relief Appropriation Act of 1935 or by the Federal Emergency Administration of Public Works, or other Governmental Agency, or in the event said work cannot be completed within the limits of the total obligation assumed by the Association hereunder, the Association shall nevertheless pay to and reimburse the United States for the amount expended in the partial completion of such works. Upon completion of the work to be performed by the United States hereunder, or upon termination of work because of the failure of Congress to make necessary appropriations therefor and/or the failure of the Federal Emergency Administration of Public Works, or other Governmental Agency, to allot funds for the purpose, the Secretary shall furnish the Association with a statement of the total disbursements for each item of work to be performed by the United States hereunder. The determination of the Secretary as to the disbursements and expenditures of the United States and the obligations of the Association hereunder shall be final and binding on the parties hereto.

Terms of Payment

13. The amount herein agreed to be paid to the United States shall be due and payable in forty (40) annual instalments commencing with the calendar year in which notice of completion of the work provided for herein is given to the Association, or commencing with the calendar year in which notice of termination of work is given as provided in Article twelve (12) hereof. The first five (5) of such installments shall each be one per centum (1%) of the amount herein agreed to be paid to the United States; the next ten (10) of such instalments shall each be two per centum (2%) of the amount herein agreed to be paid to the United States, and the remainder of such annual instalments shall each be three per centum (3%) of the amount herein agreed to be paid to the United States; provided, however, that in

event any sums are paid to the Association by the United States Indian Service on account of the construction cost of Bartlett Dam as provided in the aforesaid contract between the United States and the Association of date June 3, 1935, then, and in such event, such sums shall, if directed by the Secretary, be immediately turned over to the Bureau of Reclamation and be applied on the obligations of the Association hereunder. The sums payable annually as set forth above shall be due and payable on December first of each year; provided, however, that if notice of completion or termination of work under the provisions of Article twelve (12) hereof be given to the Association subsequent to September first of any year the first instalment of charges hereunder shall be due and payable on December first of the next succeeding year.

Association to be Reimbursed for Preliminary Expenditures

14. The United States, subject to the allowance of payment under this article by the General Accounting Office of the United States, agrees (1) to reimburse the Association for moneys advanced by it to the United States to cover the preliminary expenses of the Bureau of Reclamation in the preparation of the plans and specifications for the work covered by this contract. Twenty five thousand dollars ($25,000.00) having been so advanced to the United States for the preparation of plans and specifications, and an additional Twenty-five thousand dollars ($25,000.00) for field investigations and surveys, and (2) to reimburse the Association in the maximum amount of Twenty-five thousand dollars ($25,000.00) for additional expenditures by the Association itself in the preparation of plans and specifications and in field investigations and surveys in connection with the work involved in this contract. The Association shall make under oath such proof as may be required by the Chief Engineer of the Bureau of Reclama-

tion as to the amount of its expenditures under (2) above, and the decision of said Chief Engineer as to whether such expenditures were made and as to the amount thereof shall be conclusively binding upon the parties hereto.

Association to Use all Powers to Collect Charges

15. The Association agrees that it will cause to be made and collected all necessary assessments, including assessments to make up for the defaults of those who do not pay when due assessments levied by the Association, and will use all powers and resources of the Association, including the power of the Association to levy and collect assessments against its shares of stock and to collect and pay to the United States all charges or sums provided in this contract in full on or before the day that the same become due. All assessments made by the Association for the payments of amounts due the United States under this contract shall be levied separately and apart from any assessment made by the Association for other purposes, and the moneys realized from assessments on account of such assessments shall be deposited in a bank to be selected by the Association, subject to the approval of the Secretary, and under an agreement with such bank that the money so deposited shall be withdrawn only upon remittance payable to the Bureau of Reclamation in satisfaction of any sum or sums due under this contract. The Association further agrees that no assessments for any purpose other than payments to the United States will be made by the Association on a parity with or other than junior and subordinate to any and all assessments made by the Association for the payments of the amounts due the United States without first obtaining the written consent of the Secretary.

Rules and Regulations

16. There is reserved to the Secretary the right to prescribe and enforce rules and regulations not inconsistent with this contract. Such rules and regulations may be modified, revised and/or extended from time to time (after notice to the Association and opportunity for it to be

heard), as may be deemed proper, necessary or desirable by the Secretary to carry out the true intent and meaning of the law and of this contract, or amendments thereof, or to protect the interests of the United States. The Association hereby agrees that it will fully adhere to all such rules and regulations.

Contract to be Authorized by Election

17. The execution of this contract by the Association shall be approved by its Council and its Board of Governors, and authorized by the shareholders of the Association at an election to be held for that purpose, all as prescribed by its Articles of Incorporation and/or By-laws. The Association shall therafter, without delay, and at its own cost and expense, furnish the United States for its files, copies in triplicate, of all proceedings in connection therewith, which said copies shall be properly certified by its Secretary under seal of the Association.

Title to Remain in United States

18. Title to the aforesaid Bartlett Dam and/or any other of the dams and works enumerated in Article seven (7) hereof shall be and remain in the United States until otherwise provided by Congress notwithstanding transfer of the care, operation and maintenance thereof to the Association. Should the United States Biological Survey of the Department of Agriculture desire to establish and maintain bird reserves or wild life refuges upon land acquired for the Bartlett Dam or reservoir, it shall be permitted to do so, and the Association shall be governed in that regard by such cooperative regulations as may be agreed upon between the Secretary of the Interior and the Secretary of Agriculture.

Interest and Penalties

19. No interest shall be charged on any instalments of charges due from the Association hereunder, except that on all such instalments or any part thereof, which may remain unpaid by the Association to the United States after the same become due, there shall be added to the amount un-

paid a penalty of one-half of one per centum (½%) and a like penalty of one-half of one per centum (½%) of the amount unpaid shall be added on the first day of each month thereafter so long as such default shall continue.

Access to Books and Records

20. The officials or designated representatives of the Association shall have full and free access to the books and records of the United States, so far as they relate to the matters covered by this contract, with the right at any time during office hours to make copies of and from the same, and the Secretary shall have the same right in respect of the books and records of the Association. The Association will, within thirty (30) days after demand by the United States, pay the United States the cost, as determined by the Secretary, of any audit made by the United States of the books of the Association under this article.

Contract Supplementary to Prior Contracts

21. This contract is supplementary to those certain contracts between the United States and the Association, bearing dates June 25, 1904, September 6, 1917, July 26, 1922, June 30, 1930, November 29, 1930, and June 3, 1935, but except as expressly modified hereby the said contracts shall be and remain in full force and effect.

Rights Reserved Under Section 3737 Revised Statutes

22. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States.

Remedies under Contract not Exclusive

23. Nothing contained in this contract shall be construed as in any manner abridging, limiting or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions

hereof which it would otherwise have. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provisions hereof or of a subsequent breach of such provision.

Covenant Against Contingent Fees

24. The Association warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to terminate the contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Association for the purpose of securing business.

Failure of Congress to Appropriate Funds

25. If the operations of this contract extend beyond the current fiscal year or exceed in volume the amount of money made available for its completion through appropriation by Congress, or allotment by the Federal Emergency Administration of Public Works, or other Governmental Agency, it is understood that the contract is made contingent upon Congress making the necessary appropriation and/or the Federal Emergency Administration of Public Works, or other Governmental Agency, making the necessary allotment for expenditures hereunder after such current year has expired, or after such previous appropriation or allotment has been exhausted. In case such appropriation and/or allotment as may be necessary to carry out this contract is not made, the Association hereby releases the Government from all liability due to the failure of Congress, the Federal Emergency Administration of Public Works, or other Governmental Agency, to make such appropriation and/or allotment.

Interest in Contract Not Transferable

26. No interest in this contract is transferable by the Association to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States.

Member of Congress Clause

27. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this retriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Successors and Assigns Obligated

28. The provisions of this contract shall apply to and be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By (S)Harold L. Ickes,
Secretary of the Interior

SALT RIVER VALLEY WATER USERS' ASSOCIATION,

By (S) Lin B. Orme,
President

[SEAL]

By (S) F. C. Henshaw,
Secretary

APPENDIX D

AFFIDAVIT OF LARRY EASTLUND

STATE OF ARIZONA
COUNTY OF MARICOPA } ss.

I, Larry Eastlund, being first duly sworn, state of my own knowledge:

1. I am employed by the United States Department of the Interior, Bureau of Indian Affairs, in the Phoenix Area Office, Phoenix, Arizona. At the present time, I am a Rights Protection Specialist in the Trust Protection Unit where I specialize in hydrology. I have been employed with the Bureau of Indian Affairs for nine (9) years, the last five (5) of which have been in the area of natural resources on Indian lands. I have a bachelor's degree in geology and a master's degree in natural resources.

2. As a result of my position, it is often necessary for me to make calculations and develop statistics as to natural resources on Indian reservations, including the calculation of land areas.

3. I have reviewed the information available to this Area Office in regard to the total area of federal Indian lands located within the Salt River watershed above Granite Reef Dam. As a result of my calculations, I have determined that there are approximately 3,058 square miles (1,957,000 acres) of Indian reservation land located within the Salt River watershed above Granite Reef Dam.

Dated this 31st day of May, 1979.

/s/ LARRY EASTLUND
Larry Eastlund

Subscribed and sworn to before me this 31st day of May, 1979, by LARRY EASTLUND.

/s/ JOHN J. DE CENSO
Notary Public

My commission expires:
Sept. 14, 1980

APPENDIX E

AFFIDAVIT OF JAMES L. KIMBALL

STATE OF ARIZONA
COUNTY OF APACHE } ss.

I, James L. Kimball, being first duly sworn, state of my own knowledge:

1. I am employed by the United States Department of Agriculture, Forest Service, in the Apache-Sitgreaves National Forest Office, Springerville, Arizona. At the present time I am the Supervisor for the Apache-Sitgreaves National Forest. I have been employed with the Department of Agriculture for approximately 20 years and I have a bachelor of science degree in forestry.

2. As Supervisor of the Apache-Sitgreaves National Forest I have the responsibility to oversee the preparation of statistics concerning the natural resources of this forest.

3. Pursuant to my direction, members of my staff have reviewed the information available to this office in regard to that portion of the Apache-Sitgreaves National Forest which is located within the Salt River watershed above Granite Reef Dam. As a result of that review, we have determined that there are approximately 391 square miles (250,000 acres) of Apache-Sitgreaves National Forest land located within the Salt River watershed above Granite Reef Dam.

Dated this 30th day of May, 1979.

/s/ JAMES L. KIMBALL
James L. Kimball

Subscribed and sworn to before me this 30th day of May, 1979.

/s/ DOROTHALENE TUCKNESS
Notary Public

My commission expires: 4/15/83

APPENDIX F

AFFIDAVIT OF BRUCE B. HRONEK

STATE OF ARIZONA
COUNTY OF MARICOPA } ss.

I, Bruce B. Hronek, being first duly sworn, state of my own knowledge:

1. I am employed by the United States Department of Agriculture, Forest Service, in the Tonto National Forest Office, Phoenix, Arizona. At the present time I am the Supervisor for the Tonto National Forest. I have been employed with the Department of Agriculture for approximately 22 years and I have a bachelor of science degree in forestry along with a masters degree in business administration.

2. As supervisor of the Tonto National Forest, I have the responsibility to oversee the preparation of statistics concerning the natural resources of this forest.

3. Pursuant to my direction, members of my staff have reviewed the information available to this office in regard to that portion of the Tonto National Forest which is located within the Salt River watershed above Granite Reef Dam. As a result of that review, we have determined that there are approximately 2,575 square miles (1,648,000 acres) of Tonto National Forest land located within the Salt River watershed above Granite Reef Dam.

Dated this 29 day of May, 1979.

/s/ BRUCE B. HRONEK
Bruce B. Hronek

Subscribed and sworn to before me this 29 day of May, 1979.

/s/ LA VONDA T. WARD
Notary Public

My commission expires: Sept. 5, 1980

APPENDIX G

AFFIDAVIT OF HAROLD R. RAMSBACHER

STATE OF ARIZONA
COUNTY OF MARICOPA } ss.

I, Harold R. Ramsbacher, being first duly sworn, state of my own knowledge:

1. I am employed by the United States Department of the Interior, Bureau of Land Management, in the Arizona State Office, Phoenix, Arizona. At the present time, I am Chief of the Resources Division for this State Office of the Bureau of Land Management. I have been employed with the Department of the Interior for approximately 20 years and I have a bachelor of science degree in range management along with a masters degree in agricultural economics.

2. As Chief of the Resources Division for this State Office, I have the responsibility to oversee the preparation of statistics concerning the national resources of the BLM administered lands in Arizona.

3. Pursuant to my direction, members of my staff have reviewed the information available to this office in regard to the total area of BLM administered land located within the Salt River watershed above Granite Reef Dam. As a result of that review, we have determined that there are approximately 8 square miles (4,880 acres) of BLM administered land located within the Salt River watershed above Granite Reef Dam.

Dated this 30th day of May, 1979.

/s/ HAROLD R. RAMSBACHER
Harold R. Ramsbacher

Subscribed and sworn to before me this 30th day of May, 1979.

/s/ MARTHA C. PEREZ
Notary Public

My commission expires: May 25, 1982

ARTICLE 6. DETERMINATION OF CONFLICTING RIGHTS

§ 45-231. Determination of conflicting rights

A. The department may, and upon a petition signed by one or more water users upon a stream or water supply requesting the determination of the relative rights of the various claimants to the waters of that stream or supply shall, if the facts and conditions justify, determine the rights of the various claimants. The department shall fix a time for taking testimony, and shall make examinations necessary to determine such rights. If an action has been brought in a state court for determination of such rights, the court may transfer the action to the department for determination as provided in this article, but no proceedings shall be taken in such action by the department until such transfer is made.

B. When rights to the use of water or dates of appropriation have been determined in a judgment or decree of a court, the department shall accept the determination of such rights and dates of appropriation as found in the judgment or decree, and the owner of an appropriation adjudicated therein need not appear in or take notice of the proceedings, investigations or hearings of the department except to disprove abandonment or other loss of the right adjudicated by the judgment or decree.

§ 45-232. Publication of notice of investigation

The department shall prepare a notice setting forth the place and date when investigation will begin of the flow of the stream or supply, the ditches diverting water therefrom and the land irrigated thereby, and requiring all claimants to rights in the waters thereof to make proof of their claims

when directed by the department. The notice shall be published in two issues of one or more newspapers of general circulation in the counties in which the water supply is located.

§ 45-233. Examination of stream and lands irrigated

The department shall examine the stream or supply, the works diverting water therefrom, the discharge of the stream as shown by existing data and additional measurements, the carrying capacity to the various ditches and canals, the lands irrigated or susceptible of irrigation from the various ditches and canals, and shall make measurements thereof and take such other steps and gather such other information necessary to a proper determination of the relative rights of the parties. The examinations shall be reduced to writing, and kept in the department as a public record. The department shall make a map or plat on a scale not less than one inch to the mile showing with substantial accuracy the course of the stream or supply, the location of the ditch or canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated or are susceptible of irrigation from the ditches and canals already constructed.

§ 45-234. Notice to claimants

During the investigation the department shall send by registered mail to each claimant to the use of any waters of such stream or supply, so far as the claimants can reasonably be ascertained, a notice stating the date and place the department will take testimony relating to the rights to the waters of the stream or supply. The notice shall be mailed at least thirty days prior to the date set therein for taking testimony, and shall be published in two issues of one or more newspapers of general circulation in the counties in which the stream or supply is located. The taking of testimony may be adjourned from time to time and from place to place for the convenience of the persons interested.

§ 45-235. Statement of claimant

A. The department shall enclose with the notice provided by § 45-234 a form on which the claimant shall present in writing the particulars of his claim of right to the waters. The statement shall include:

1. The name and address of the claimant.

2. The nature of the right or use on which the claim is based.

3. The time of initiation of the right and the commencement of the use.

4. If distributing works are used or required, the date of beginning and completion of construction or of enlargements and the dimensions of the ditch as originally constructed and as enlarged.

5. The date when water was first used for beneficial purposes.

6. If used for irrigation, the amount of land reclaimed the first year and in subsequent years, and the amount and general location of the land, the character of the soil and the kind of crops cultivated.

7. Other facts disclosing a compliance with the law in acquiring the right.

B. The statement shall be verified by the claimant. If verification is made before an authorized officer of the department, no charge shall be made therefor.

§ 45-236. Inspection of evidence by claimants

Upon completion of the testimony, the department shall give notice by registered mail to the claimants that at a time and place named in the notice, not less than ten days thereafter, the evidence will be open to inspection by the claimants. The department shall keep the evidence open to inspection at the place of inspection for not less than thirty days, or such further time as fixed in the notice.

§ 45-237. Notice of contest; hearing; witnesses; adjournment

A. If a claimant desires to contest the rights asserted in the evidence submitted by another claimant he shall, within five days after expiration of the period fixed in the notice for public inspection of the evidence, notify the department in writing, under oath, stating with reasonable certainty the grounds of his contest.

B. The department shall notify, by registered mail or by personal service, the contestant and the claimant whose rights are contested to appear before the department at a time and place designated in the notice, not less than thirty nor more than sixty days from the date the notice is served.

C. The department may adjourn the hearing from time to time upon reasonable notice to the parties, may issue subpoenas and compel the attendance of witnesses, take evidence, order the taking of depositions and issue commissions therefor. Witnesses shall receive fees as in civil actions, the cost to be taxed in the same manner as the costs in civil actions.

D. The evidence in the hearing shall be limited to the subjects enumerated in the notice and statement of contest.

§ 45-238. Order of determination; court hearing; notice to claimants

A. After completion of the taking of testimony or the hearing of a contest, the department shall file the evidence in its office and make and enter of record findings of fact and an order determining and establishing the several rights of the claimants to the waters of the stream or supply.

B. The original evidence and certified copies of the measurements and maps and of the order of determination and findings of the department shall be thereupon filed by the department with the clerk of the superior court in the county where the greatest number of water users reside whose rights are determined by the order of determination.

Upon filing of the evidence and order, the court shall by an order fix a time for hearing the matter, which shall be at least forty days subsequent to the date of the order. The clerk of the court shall forthwith deliver a certified copy of the order to the department which shall immediately upon receipt thereof notify each claimant who has appeared in the proceeding of the time and place for the hearing. Service of the notice shall be deemed complete when the notice is deposited in the post office for mailing by registered mail, addressed to the claimant at his address as set forth in the statement of his claim. Proof of service shall be made and filed with the court by the department as soon as possible after mailing of the notices.

§ 45-239. Filing exception to order; hearing and judgment

A. The proceedings in the superior court shall be conducted as nearly as possible as civil actions.

B. At any time prior to the hearing any party interested may file exceptions in writing to the findings and order of determination, or any part thereof, which shall state with reasonable certainty the grounds of the exceptions and shall specify the parts of the findings and order to which exceptions are made. A copy of the exceptions shall be served upon any adverse party affected thereby. Service may be made upon the adverse party in person, upon his attorney if he has appeared by attorney, upon his agent, or if a nonresident of the state, by registered mail addressed to his place of residence as disclosed in the proceedings. If no exceptions are filed the court shall on the day set for the hearing enter a judgment affirming the determination of the commissioner. If exceptions are filed the court shall fix a time not less than thirty days thereafter for a hearing upon the exceptions. All parties may be heard upon the exceptions, and the department may appear on behalf of the state.

C. The court may remand the action to the department for further testimony and a further order of determination, or affirm or modify the order of the department and assess the costs as it deems just.

D. The clerk of the court immediately upon entry of the judgment shall transmit a certified copy thereof to the department which shall immediately enter it of record and file a certified copy thereof with the court recorder of each county in which the stream or supply, or any part, or a tributary thereof, is located.

§ 45-240. Division of water pending hearing; conclusiveness of determination

A. The determination of the department shall be in full force and effect from the date of its entry in the department records, and during the pendency of the proceedings in the court, and until a certified copy of the judgment of the court is transmitted to the department, the division of water from the stream or supply involved in the appeal shall be made in accordance with the order of the department.

B. The determination of the department as confirmed or modified by the judgment of the court shall be conclusive as to all prior rights and the rights of all existing claimants upon the stream or body of water embraced in the determination.

§ 45-241. Issuance of certificate upon final determination

Upon filing of the judgment the department shall issue to each person represented in the determination a certificate, signed by the commissioner of the department and attested by the seal of the department, setting forth the name and address of the owner of the right, the priority of date and the extent and purpose of the right and, if the water is for irrigation purposes, a description of the legal subdivisions of land to which the water is appurtenant. The department shall transmit the certificate and the recording fee to the

county recorder of the county in which such right is located, who shall record the certificate in a book kept for that purpose and thereupon immediately transmit the certificate to the owner.

§ 45-242. Rehearing

Within six months after the entry of the judgment by the court the department or any party interested may apply to the court for a rehearing. If it appears to the court that there are good grounds for a rehearing, the court shall enter an order fixing the time for hearing the application, and the clerk of the court shall, at the expense of the petitioner, forthwith mail to the department and to every party interested notice of the application and of the time and place of the hearing thereof.

§ 45-243. Estoppel; intervention by persons not notified

A. When proceedings are instituted under this article for determination of the rights to the use of water, all claimants interested therein shall appear and submit proof of their claims at the time and in the manner required by this article. A claimant not excepted by § 45-231 who fails to appear in the proceedings and submit proof of his claim shall be barred and estopped from subsequently asserting any right theretofore acquired upon the stream or other body of water embraced in the proceedings, and shall forfeit all rights to the use of water theretofore claimed by him.

B. Any person interested in the water upon whom service of notice of the pendency of the proceedings was not had and who did not have actual knowledge or notice of the pendency of the proceedings may, at any time within one year after entry of the order of determination by the department, file a petition with the department to intervene in the proceedings. The petition shall contain all matters required of claimants who have been served with notice of the proceedings and a statement that the intervener had no actual knowledge or notice of the pendency of the proceedings. Upon filing the petition the petitioner shall be allowed

to intervene upon such terms as are equitable, and thereafter shall have the rights of a claimant served, and like proceedings shall be had upon the claim of such petitioner.

§ 45-244. Several determinations; reopening records

When the rights to the waters of a stream or supply have been determined at more than a single proceeding, the department may open to public inspection, in the manner provided by this article for the opening and inspection of evidence, all proofs and evidence of rights to the water, and the finding of the department in relation thereto in the proceedings affecting the stream or supply. Any person may contest the claims or rights of another to the water but the contest may be maintained only between claimants who were not parties to the same adjudication in the original hearings.

§ 45-245. Disagreement of water users; appeal to superintendent; rotation

A. The water users from a ditch or reservoir who are unable to agree upon the distribution or division of water through or from the ditch or reservoir may apply to the water superintendent of the district in which the ditch or reservoir is located, by written notice, stating the facts and requesting the superintendent to regulate the ditch or reservoir and make a just division or distribution of water therefrom to the parties entitled to the use thereof.

B. The superior court may also direct the water superintendent of the district to take charge of and enforce any judgment determining water rights pending a determination of all the water rights of the watershed. Water users owning land with appurtenant water rights may rotate the use of the supply to which they are entitled, and when two

or more water users notify the superintendent that they desire to use the water by rotation, and present a written agreement as to the manner of rotation, the superintendent shall distribute the water in accordance with the agreement.

§ 45-251. Definitions

In this article, unless the context otherwise requires:

1. "Commission" means the Arizona water commission.

2. "General adjudication" means an action for the judicial determination or establishment of the extent and priority of the rights of all persons to use water in any river system and source.

3. "Person" means an individual, a partnership, a corporation, a municipal corporation, the state of Arizona or any political subdivision, the United States of America, an Indian tribe or community or any other legal entity, public or private.

4. "Potential claimant" means all persons claiming water rights or on whose behalf claims to water rights are asserted.

5. "River system and source" means all water appropriable under § 45-101 and all water subject to claims based upon federal law.

§ 45-252. General adjudication; representation; superior court; assignment to judge; petition

A. One or more water users upon a river system and source, the water rights of which have not been previously adjudicated under this article and administered by the commission, or the state of Arizona upon the request of any state agency other than the commission may file a petition to have determined in a general adjudication the nature, extent and relative priority of the water rights of all persons in the river system and source.

B. The attorney general shall represent the state of Arizona in connection with all water claims asserted by this state. The commission shall be represented by legal counsel retained in accordance with § 45-505, subsection C.

C. The general adjudication shall be brought and maintained in the superior court in the county in which the largest number of potential claimants resides. The clerk of the court in which the petition is filed shall notify the supreme court and the supreme court shall be responsible for assigning the general adjudication to a superior court judge and appointing a master.

D. The petition for a general adjudication shall be captioned: "In re the general adjudication of all rights to use water in the _____ river system and source" and shall request that the court determine the nature, extent and relative priority of the water rights of all persons in the river system and source.

§ 45-253. Service of summons, statement of claimant form; record

A. Personal service of the summons and petition shall not be required. The court shall order that:

1. The clerk of the court issue the summons which shall specify the date by which the statement of claimant must be filed, generally describe the nature of the general adjudication and set forth such other information as may be necessary or desirable in the circumstances.

2. The clerk of the court deliver the summons, a copy of the petition and court-approved statement of claimant form to the commission which shall make such copies and prepare such documents as may be necessary to effect service. The commission shall assist the court in determining the scope of adjudication by recommending the portions of the river, its tributaries and any other relevant sources subject to the adjudication and in development of a statement of claimant form which shall include such duplicates as may be necessary. Upon identifying the potential claimants pursuant to § 45-256, subsection A, paragraph 1, the commission shall effect service on all known potential claimants

by mailing a copy of the summons, petition and court-approved statement of claimant form by registered mail, return receipt requested, to such known potential claimants.

3. The clerk of the court reimburse the commission from the fund of fees paid by the claimants pursuant to § 45-254, subsection F, for funds expended by the commission in effecting service of process and any subsequent notices to claimants.

B. At the time of mailing of service of process on known potential claimants, the commission shall effect service on all unknown potential claimants by publication of the petition and summons at least once a week for four consecutive weeks in a newspaper published in each of the counties within which interests in and to use of water may be affected by the general adjudication.

C. The court shall direct the commission:

1. To return the original summons to the clerk of the court with an endorsement of the dates on which mailing and publication were completed.

2. To maintain a true and accurate record of the names and addresses of all persons who have in fact been served by registered mail, return receipt requested. Any such record, together with all supporting documents, shall constitute the records of the court which shall be subject as such to the supervision and control of the court.

§ 45-254. Statement of claimant; filing; Information to be included; verification; failure to file; fees

A. Each potential claimant who is served shall present in writing the particulars of his claim on the court-approved statement of claimant form and shall file the statement of

claimant form with the court within ninety days of the date of service. The court may extend the time for good cause. A duplicate of each statement of claimant shall be made available by the clerk of the court to the commission.

B. The statement of claimant form may be filed by a person on behalf of its members or users and shall constitute the required filing of its members or users.

C. Each statement of claimant shall include the following information:

1. The name and mailing address of the potential claimant.

2. The name of the specific river, stream, tributary, wash or other source from which the right to divert or make use of water is claimed.

3. The quantities of water and the periods of time during the year for which use is claimed.

4. If distributing works are used or required, the date of beginning and completion of construction or of enlargements and the dimensions of the ditch as originally constructed and as enlarged.

5. If the use is for irrigation, the amount of land reclaimed the first year and in subsequent years, and the amount and general location of the land, the character of the soil and the kind of crops cultivated.

6. The legal description of the point or points of diversion and place of use of the waters to the nearest forty-acre tract or by other appropriate description and such map or plat showing the relative points of diversion and place of use as may be required.

7. The purpose and extent of use.

8. The time of the initiation of the right and the date when water was first used for beneficial purposes for the various amounts and times claimed in paragraph 3 of this subsection.

9. The legal basis for the claim.

D. The statement of claimant shall be verified by the claimant or the person authorized to file as provided in subsection B.

E. Any potential claimant properly served who fails to file a statement of claimant in accordance with the requirements of this article shall be barred and estopped from subsequently asserting any right theretofore acquired upon the river system and source and shall forfeit all rights to the use of water in the river system and source theretofore claimed by him. Any potential claimant who did not have actual knowledge or notice of the pendency of the proceedings may, at any time within one year after the return of service, move to intervene in the general adjudication, if his motion to intervene contains all matters required of claimants and an affidavit that the intervenor had no actual knowledge or notice of the pendency of the proceedings. Such motion to intervene shall be granted upon such terms as are equitable, and the movant thereafter shall have the rights of a claimant in the general adjudication.

F. The fee for filing a statement of claimant by an individual is twenty dollars and by a corporation, municipal corporation, the state or any political subdivision, an association or partnership is two cents for every acre-foot of water claimed, or twenty dollars, whichever is greater. The commission shall review the statements of claimant and the amount of fees paid as to each and report to the court or master the sufficiency of the fees paid with respect to each statement of claimant. A claim shall not be considered by the court or the master unless all fees with respect to such claim have been fully paid in accordance with the provisions of this article. Fees shall not be imposed upon any Indian tribe, community or allottee personally appearing in the general adjudication to assert claims to water.

§ 45-255. Appointment of master; compensation

A. After the time for filing all statements of claimant has expired, the supreme court may, and in any case where there are more than one hundred potential claimants shall, appoint a master under rule 53 of the Arizona rules of civil procedure to report on all legal and factual issues. If a master is to be appointed, the supreme court may select the master from a list of persons which shall be expeditiously submitted by the commission.

B. The master's compensation and expenses shall be fixed by the court and paid out of the fund of fees paid by the claimants pursuant to § 45-254, subsection F. In the event such fund of fees is insufficient, the master's compensation and expenses shall be paid from funds equitably assessed by the court in its discretion against the claimants.

§ 45-256. Technical assistance of commission; report

A. The court or the master shall request technical assistance from the commission in all aspects of the general adjudication with respect to which the commission possesses hydrological or other expertise. In rendering such technical assistance, the commission shall direct the state water engineer, with the assistance of the commission staff, expeditiously to:

1. Identify the hydrological boundaries of the river system and source and the names and addresses of all reasonably identifiable potential claimants. In identifying potential claimants, the commission shall, at a minimum, identify as far as reasonably possible the current record owners of all real property within the geographical scope of the adjudication.

2. Locate, procure and make available all public and other records relevant to determination of any factual or legal issues.

3. Conduct a general investigation or examination of the river system and source.

4. Investigate or examine the facts pertaining to the claim or claims asserted by each claimant.

5. Make a map or plat on a scale not less than one inch to the mile adequate to show with substantial accuracy the course of the river system and source, the location of the ditch or canal diverting water from such river system and source, and the legal subdivisions of lands which have been irrigated or are susceptible of irrigation from the ditches and canals already constructed.

6. Take such other steps and gather such other information as may be necessary or desirable for a proper determination of the relative rights of the parties.

B. The technical assistance rendered by the commission shall be set forth in summary form on a claim by claim basis in a report prepared by the state water engineer and filed with the court or the master, which shall then be available for inspection by any claimant. Any claimant may file with the court or the master written objections to the report or any part of the report within one hundred eighty days of the date on which the report was filed. Those parts of the report with respect to which no written objections have been timely filed may be summarily admitted into evidence. Those parts of the report with respect to which written objections have been timely filed shall not be admitted into evidence until such time as each claimant who has filed written objections in a timely manner shall have had a fair and reasonable opportunity to contest the validity or admissibility of those parts of the report to which his objections were directed. Each claimant who has filed written objections in a timely manner shall also have a fair and

reasonable opportunity to present evidence in support of or in opposition to those parts of the report to which his objections were directed, to present evidence in support of his claim and to make objections to any other claim.

C. Prior to filing the report with the court or the master as provided in subsection B, the state water engineer shall prepare a preliminary report. The state water engineer shall give notice to each water claimant that the preliminary report is available for inspection and comment. Upon expiration of the period provided for timely comment, the state water engineer shall revise the preliminary report as may be appropriate and shall file the report with the court or the master in accordance with subsection B. The commission shall adopt such rules and regulations as may be necessary to ensure that adequate notice is given, that the preliminary report is sufficently available for inspection by the water claimants and that provisions are made for adequate time and procedure for comment on the preliminary report.

§ 45-257. Hearings, report of master; final judgment by court; administration and enforcement of decree

A. The master shall:

1. After due notice, conduct such hearings and take such testimony as shall be necessary to determine the relative water rights of each claimant.

2. Prepare and file with the court a report in accordance with rule 53(g) of the Arizona rules of civil procedure, which shall contain findings of fact and conclusions of law. Each claimant shall have the right to file with the court written objections to the master's report within one hundred eighty days of the date on which the master's report was filed with the court.

3. Maintain under his control all records and documents at such locations as may be designated by the court.

B. The court, upon review of the master's report and in accordance with rule 53 of the Arizona rules of civil procedure, shall:

1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source, provided when rights to the use of water or dates of appropriation have previously been determined in a judgment or decree of a court, accept the determination of such rights and dates of appropriation as found in the judgment or decree unless such rights have been abandoned.

2. Establish, in whatever form determined to be most appropriate by the court, one or more tabulations or lists of all water rights and their relative priorities on the river system and source.

3. Refer the final judgment or decree to the commission for administration and enforcement under the continuing jurisdiction of the court.

4. Make appropriate orders to ensure that the entire record of the general adjudication is preserved in an accessible and usable form.

5. Record a certified copy of the final judgment or decree in each county within the geographical scope of the general adjudication which shall constitute constructive notice of the contents of the judgment or decree.

§ 45-25. Transfer of proceedings of state land department to superior court

A. Upon the effective date of this article, the state land department shall immediately transfer all proceedings then pending under §§ 45-231 through 45-245 and all fees paid thereunder to the superior court in the county in which the largest number of potential claimants resides. The transfer shall be effected in the following manner

1. The department shall file with the superior court the original petition previously filed pursuant to § 45-231, subsection A, which shall then be deemed to be the petition in the general adjudication and which shall be recaptioned in accordance with § 45-252, subsection D.

2. The department shall file with the superior court a certified copy of the notice mailed to all potential claimants pursuant to § 45-234, which shall be adopted by the court as the summons required by § 45-253, subsection A, paragraph 1.

3. The department shall file with the superior court all affidavits of publication which were obtained in connection with all publications made pursuant to §§ 45-232 and 45-234.

4. The department shall file with the superior court its records, together with all supporting documents, of the names and addresses of all of the known potential claimants to whom the notice and statement of claimant were mailed pursuant to §§ 45-234 and 45-235.

5. The department shall file with the superior court all statements of claimant which have been or are thereafter filed with it pursuant to § 45-235, which shall then be deemed to be the statements of claimant of the particular water claimant in the general adjudication. For proceedings which were commenced before the effective date of this article but for which the date for filing statements of claimant falls after the effective date of this article.

(a) The department shall continue to accept the statements of claimant but shall immediately file them with the superior court.

(b) The superior court shall, as to any filing fees paid pursuant to § 45-108, subsection B, adjust the fees in accordance with the amounts of the fees set forth in § 45-254, subsection F, and either reimburse the claimant or direct the claimant to pay any adjusted balance due to the superior court.

B. In this section, a reference to §§ 45-231 through 45-245 refers to any such section as was in effect prior to the effective date of this section.

§ 45-259. Rules governing general adjudications

The general adjudication is governed in all respects by the Arizona rules of evidence, the Arizona rules of civil procedure and any other procedural rules generally applicable to civil proceedings, except that the specific provisions of this article govern if they conflict with the Arizona rules of civil procedure or any other procedural rules generally applicable to civil proceedings. Any proceedings previously initiated under prior law and transferred to the superior court for adjudication are subject to the provisions of this article only after the transfer has been effected.

§ 45-260. General adjudication fund

A. The state treasurer shall maintain a fund known as the general adjudication fund. All money appropriated to effect service of process and notices on potential claimants pursuant to § 45-253, subsection A, paragraphs 2 and 3, and all reimbursements to the commission pursuant to § 45-253, subsecion A, paragraph 4 shall be deposited in such fund.

B. Monies in the general adjudication fund are exempt from the provisions of § 35-190, relating to lapsing of appropriations.

§ 45-251. Definitions

In this article, unless the context otherwise requires:

1. "General adjudication" means an action for the judicial determination or establishment of the extent and priority of the rights of all persons to use water in any river system and source.

2. "Person" means an individual, a partnership, a corporation, a municipal corporation, the state of Arizona or any political subdivision, the United States of America, an Indian tribe or community or any other legal entity, public or private.

3. "Potential claimant" means all persons claiming water rights or on whose behalf claims to water rights are asserted.

4. "River system and source" means all water appropriable under § 45-131 and all water subject to claims based upon federal law.

§ 45-252. General adjudication; representation; superior court; assignment to judge; petition

A. One or more water users upon a river system and source, the water rights of which have not been previously adjudicated under this article and administered by the director of water resources, or the state of Arizona upon the request of any state agency other than the department of water resources may file a petition to have determined in a general adjudication the nature, extent and relative priority of the water rights of all persons in the river system and source.

B. The attorney general shall represent the state of Arizona in connection with all water claims asserted by this state. The director shall be represented by legal counsel retained in accordance with § 45-104, subsection G.

C. The general adjudication shall be brought and maintained in the superior court in the county in which the largest number of potential claimants resides. The clerk of the court in which the petition is filed shall notify the supreme court and the supreme court shall be responsible for assigning the general adjudication to a superior court judge and appointing a master and for consolidating the general adjudication with other pending general adjudications, if appropriate.

D. The petition for a general adjudication shall be captioned: "In re the general adjudication of all rights to use water in the _____ river system and source" and shall request that the court determine the nature, extent and relative priority of the water rights of all persons in the river system and source.

§ 45-253. Service of summons, statement of claimant form; record

A. Personal service of the summons and petition shall not be required. The court shall order that:

1. The clerk of the court issue the summons which shall specify the date by which the statement of claimant must be filed, generally describe the nature of the general adjudication and set forth such other information as may be necessary or desirable in the circumstances. The form of the summons shall be approved by the court.

2. The clerk of the court deliver the summons to the director who shall make such copies and prepare such documents as may be necessary to effect service. The director shall assist the court in determining the scope of adjudication by recommending the portions of the river, its tributaries and any other relevant sources subject to the adjudication and in development of a statement of claimant form which shall include such duplicates as may be necessary. Upon identifying the potential claimants pursuant to

§ 45-256, subsection A, paragraph 1, the director shall effect service on all known potential claimants by mailing a copy of the summons by registered or certified mail, return receipt requested, to such known potential claimants.

3. The clerk of the court reimburse the director from the fund of fees paid by the claimants pursuant to § 45-254, subsection F, for funds expended by the director in effective service of process and any subsequent notices to claimants.

B. At the time of commencement of mailing of service of process on known potential claimants, the director shall effect service on all unknown potential claimants by publication of the summons at least once a week for four consecutive weeks in a newspaper published in each of the counties within which interests in and to the use of water may be affected by the general adjudication.

C. The director shall publicize the general adjudication through the electronic media and in general circulation newspapers.

D. The court shall direct the director:

1. To return the original summons to the clerk of the court with an endorsement of the dates on which mailing and publication were completed.

2. To maintain a true and accurate record of the names and addresses of all persons who have in fact been served by registered mail, return receipt requested. Any such record, together with all supporting documents, shall constitute the records of the court which shall be subject as such to the supervision and control of the court.

§ 45-254. Statement of claimant; filing; information to be included; verification; failure to file; fees

A. Each potential claimant who is served shall present in writing the particulars of his claim on the court-approved statement of claimant form and shall file the statement of claimant form with the court within ninety days of the date

of service, unless otherwise ordered by the court. The court may extend the time for good cause. A duplicate of each statement of claimant shall be made available by the clerk of the court to the director.

B. The statement of claimant form may be filed by a person on behalf of its members or users and shall constitute the required filing of its members or users.

C. The statements of claimant shall include the following information, where appropriate:

1. The name and mailing address of the potential claimant.

2. The name of the specific river, stream, tributary, wash or other source from which the right to divert or make use of water is claimed.

3. The quantities of water and the periods of time during the year for which use is claimed.

4. If distributing works are used or required, the date of beginning and completion of construction or of enlargements and the dimensions of the ditch as originally constructed and as enlarged.

5. If the use is for irrigation, the amount of land reclaimed the first year and in subsequent years, and the amount and general location of the land, the character of the soil and the kind of crops cultivated.

6. The legal description of the point or points of diversion and place of use of the waters to the nearest forty-acre tract or by other appropriate description and such map or plat showing the relative points of diversion and place of use as may be required.

7. The purpose and extent of use.

8. The time of the initiation of the right and the date when water was first used for beneficial purposes for the various amounts and times claimed in paragraph 3 of this subsection.

9. The legal basis for the claim.

D. The statement of claimant shall be verified by the claimant or the person authorized to file as provided in subsection B.

E. Any potential claimant properly served who fails to file a statement of claimant in accordance with the requirements of this article shall be barred and estopped from subsequently asserting any right theretofore acquired upon the river system and source and shall forfeit all rights to the use of water in the river system and source theretofore claimed by him. Any potential claimant who did not have actual knowledge or notice of the pendency of the proceedings may, at any time within one year of the date, as set forth in the summons, by which statements of claimant must be filed, move to intervene in the general adjudication, if his motion to intervene contains all matters required of claimants and an affidavit that the intervenor had no actual knowledge or notice of the pendency of the proceedings. Such motion to intervene shall be granted upon such terms as are equitable, and the movant thereafter shall have the rights of a claimant in the general adjudication.

F. The fee for filing a statement of claimant by an individual is twenty dollars and by a corporation, municipal corporation, the state or any political subdivision, an association or partnership is two cents for every acre-foot of water claimed, or twenty dollars, whichever is greater. The director shall review the statements of claimant and the amount of fees paid as to each and report to the court or master the sufficiency of the fees paid with respect to each statement of claimant. A claim shall not be considered by the court or the master unless all fees with respect to such claim have been fully paid in accordance with the provisions of this article. Fees shall not be impoed upon any Indian tribe, community or allottee personally appearing in the general adjudication to assert claims to water.

§ 45-255. Appointment of master; compensation

A. After the time for filing all statements of claimant has expired, the supreme court may, and in any case where there are more than one hundred potential claimants shall, appoint a master under rule 53 of the Arizona rules of civil procedure to report on all legal and factual issues. If a master is to be appointed, the supreme court may select the master from a list of persons which shall be expeditiously submitted by the director.

B. The master's compensation and expenses shall be fixed by the court and paid out of the fund of fees paid by the claimants pursuant to § 45-254, subsection F. In the event such fund of fees is insufficient, the master's compensation and expenses shall be paid from funds equitably assessed by the court in its discretion against the claimants.

§ 45-256. Technical assistance of director; report

A. The court or the master shall request technical assistance from the director in all aspects of the general adjudication with respect to which the director possesses hydrological or other expertise. In rendering such technical assistance, the director shall expeditiously:

1. Identify the hydrological boundaries of the river system and source and the names and addresses of all reasonably identifiable potential claimants. In identifying potential claimants, the director shall, at a minimum, identify as far as reasonably possible the current record owners of all real property within the geographical scope of the adjudication.

2. Locate, procure and make available all public and other records relevant to determination of any factual or legal issues.

3. Conduct a general investigation or examination of the river system and source.

4. Investigate or examine the facts pertaining to the claim or claims asserted by each claimant.

5. Make a map or plat on a scale not less than one inch to the mile adequate to show with substantial accuracy the course of the river system and source, the location of the ditch or canal diverting water from such river system and source, and the legal subdivisions of lands which have been irrigated or are susceptible to irrigation from the ditches and canals already constructed.

6. Take such other steps and gather such other information as may be necessary or desirable for a proper determination of the relative rights of the parties.

B. The technical assistance rendered by the director shall be set forth in summary form on a claim by claim basis in a report prepared by the director and filed with the court or the master, which shall then be available for inspection by any claimant. Any claimant may file with the court or the master written objections to the report or any part of the report within one hundred eighty days of the date on which the report was filed. Those parts of the report with respect to which no written objections have been timely filed may be summarily admitted into evidence. Those parts of the report with respect to which written objections have been timely filed shall not be admitted into evidence until such time as each claimant who has filed written objections in a timely manner shall have had a fair and reasonable opportunity to contest the validity or admissibility of those parts of the report to which his objections were directed. Each claimant who has filed written objections in a timely manner shall also have a fair and reasonable opportunity to present evidence in support of or in opposition to those parts of the report to which his objections were directed, to present evidence in support of his claim and to make objections to any other claim.

C. Prior to filing the report with the court or the master as provided in subsection B, the director shall prepare a preliminary report. The director shall give notice to each water claimant that the preliminary report is available for inspection and comment. Upon expiration of the period provided for timely comment, the director shall revise the preliminary report as may be appropriate and shall file the report with the court or the master in accordance with subsection B. The director shall adopt such rules and regulations as may be necessary to ensure that adequate notice is given, that the preliminary report is sufficiently available for inspection by the water claimants and that provisions are made for adequate time and procedure for comment on the preliminary report.

§ 45-257. Hearings, report of master; final judgment by court; administration and enforcement of decree

A. The master shall:

1. After due notice, conduct such hearings and take such testimony as shall be necessary to determine the relative water rights of each claimant.

2. Prepare and file with the court a report in accordance with rule 53(g) of the Arizona rules of civil procedure, which shall contain findings of fact and conclusions of law. Each claimant shall have the right to file with the court written objections to the master's report within one hundred eighty days of the date on which the master's report was filed with the court.

3. Maintain under his control all records and documents at such locations as may be designated by the court.

B. The court, upon review of the master's report and in accordance with rule 53 of the Arizona rules of civil procedure, shall:

1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source, provided when rights to the use of water

or dates of appropriation have previously been determined in a judgment or decree of a court, the court shall accept the determination of such rights and dates of appropriation as found in the judgment or decree unless such rights have been abandoned.

2. Establish, in whatever form determined to be most appropriate by the court, one or more tabulations or lists of all water rights and their relative priorities on the river system and source.

3. Refer the final judgment or decree to the director for administration and enforcement under the continuing jurisdiction of the court.

4. Make appropriate orders to ensure that the entire record of the general adjudication is preserved in an accessible and usable form.

5. Record a certified copy of the final judgment or decree in each county within the geographical scope of the general adjudication which shall constitute constructive notice of the contents of the judgment or decree.

§ 45-258. Repealed by Laws 1980, 4th S.S, Ch. 1, § 71, eff. June 12, 1980

§ 45-259. Rules governing general adjudications

The general adjudication is governed in all respects by the Arizona rules of evidence, the Arizona rules of civil procedure and any other procedural rules generally applicable to civil proceedings, except that the specific provisions of this article govern if they conflict with the Arizona rules of civil procedure or any other procedural rules generally applicable to civil proceedings. Any proceedings previously initiated under prior law and transferred to the superior court for adjudication are subject to the provisions of this article only after the transfer has been effected.

§ 45-260. General adjudication fund

A. The state treasurer shall maintain a fund known as the general adjudication fund. All money appropriated to effect service of process and notices on potential claimants

pursuant to § 45-253, subsection A, paragraphs 1 and 2, and all reimbursements to the director pursuant to § 45-253, subsection A, paragraph 3 shall be deposited in such fund.

B. Monies in the general adjudication fund are exempt from the provisions of § 35-190, relating to lapsing of appropriations.

II. *Payson Community of Yavapai Apache Indians v. State of Arizona, et al.*, No. CIV 79-187 PHX VAC, CA 80-5138

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CAUSE NO. CIV 79-187 PHX VAC

Date *Description*

Mar. 7, 1979—Complaint and exhibits filed

Mar. 19, 1979—Motion to dismiss complaint filed by State of Arizona and Salt River Valley Water Users' Association

May 17, 1979—Motion to strike, responses to motion to remand, responses to motions to dismiss and memorandum to support filed by plaintiff

June 27, 1979—Order setting cause for hearing on September 21, 1979, at 2 p.m.

August 20, 1979—State of Arizona's response to motion to strike and reply memorandum for State's motions to dismiss and remand, including memorandum of points and authorities in support of all motions

August 31, 1979—Salt River Valley Water Users' Association's response to motions to strike, reply to motions to dismiss and reply to motions to remand

Sept. 12, 1979—Order granting United States leave to file a memorandum as *amicus curiae* and memorandum of the United States as *amicus curiae*

Sept. 14, 1979—The Payson Community of Yavapai—Apache Indians' reply to responses to motion to strike memorandum of points and authorities

Sept. 21, 1979—Hearing held on defendant Arizona's motion for Remand, defendant Salt River Valley Water Users' Association motion for remand, in *White Mountain Apache Tribe Petition for Removal*, No. CIV 79-182 PHX VAC (D. Ariz., petition filed March 7, 1979); *Gila*

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES (Cont.)

Date *Description*

River Indian Community Petition for Removal, CIV 79-183 PHX VAC (D. Ariz., petition filed March 7, 1979); *Salt River Pima-Maricopa Indian Community Petition for Removal*, No. CIV 79-184 PHX VAC (D. Ariz., petition filed March 7, 1979); and defendant Arizona's motion to dismiss and defendant Salt River Valley Water Users' Association motion to dismiss in *Salt River Pima-Maricopa Indian Community v. State of Arizona* No. CIV 79-185 PHX VAC; *San Carlos Apache Tribe of Arizona v. State of Arizona*, No. CIV 79-186 PHX VAC; *Payson Community of Yavapai Apache Indians v. State of Arizona, et al.*, No. CIV 79-187 PCT VAC; and Defendants' motion to dismiss in *Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Water Users' Association, et al.*, No. CIV 79-267 PHX VAC.

Oct. 1, 1979—Memorandum of the United States concerning service of process upon the Attorney General of the United States in the state action entitled *In the Matter of Determination of Relative Rights to the Use of Waters of the Salt River and Its Tributary Watershed Above Granite Reef Dam, Excluding the Verde River and Its Tributary Watershed.*

Oct. 11, 1979—Salt River Valley Water Users' Association memorandum in opposition to United States memorandum concerning service of process

Nov. 8, 1979—Stipulation and order for amendment to motions to strike, responses to motion and motions to remand and supporting memorandum; order entered that plaintiff Payson Community of Yavapai-Apache Indians have leave of court to file amended motions to strike, responses to motions to dismiss, responses to motions to remand and memorandum in support thereof, and that the amended motions, responses and memorandum shall be treated in all respects as substitutions for the motions

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES (Cont.)

Date *Description*

to strike, responses to motions to remand, responses to motions to dismiss and memorandum in support thereof filed by the Payson Community of Yavapai-Apache Indians on the 7th day of May, 1979

Nov. 15, 1979—Payson Community of Yavapai-Apache Indians' amended motion to strike, amended response to motions to dismiss, and amended response to motions to remand

Jan. 18, 1980—Order issued remanding *White Mountain Apache Tribe Petition for Removal*, No. CIV 79-182 PHX VAC (D. Ariz., petition filed March 7, 1979); *Gila River Indian Community Petition for Removal*, CIV 79-183 PHX VAC (D. Ariz., petition filed March 7, 1979); *Salt River Pima-Maricopa Indian Community Petition for Removal*, No. CIV 79-184 PHX VAC (D. Ariz., petition filed March 7, 1979) to the state court for all further proceedings and dismissing the *Salt River Pima-Maricopa Indian Community v. State of Arizona* No. CIV 79-185 PHX VAC; *San Carlos Apache Tribe of Arizona v. State of Arizona*, No. CIV 79-186 PHX VAC; *Payson Community of Yavapai Apache Indians v. State of Arizona, et al.*, No. CIV 79-187 PCT VAC, and further dismissing *Fort McDowell Mohave-Apache Indian Community v. Salt River Valley Water Users' Association, et al.*, No. CIV 79-267 PHX VAC, without prejudice. With regard to the plaintiff's second cause of action in *Fort McDowell*, the court is of the opinion that no action for damages can be entertained until the state has established parties' rights to the water of the Verde River watershed.

Jan. 25, 1980—Judgment entered dismissing Complaint without prejudice

Feb. 19, 1980—Notice of appeal filed

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES (Cont.)

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DOCKET NO. CA 80-5138

Date *Description*

July 17, 1980—Order that for the purpose of the record and a certificate of record, appeal Nos. 80-5137 and 80-5138 are consolidated

July 18, 1980—Certificate of record filed

July 15, 1981—Oral argument on appeal Nos. 80-5137, 5138, 5189, 5219, 5471 and 5837

Feb. 22, 1982—The opinion in *Northern Cheyenne Tribe v. Adsit*, 668 F.2d 1080 (9th Cir. 1982) was issued

Feb. 23, 1982—Opinions in *San Carlos Apache Tribe of Arizona v. State of Arizona*, No. 668 F.2d 1093, and *Navajo Nation v. United States*, 668 F.2d 1100 (1982) were issued

IN THE SUPREME COURT OF THE UNITED STATES NO. 81-2147

Date *Description*

May 12, 1982—Petition for Writ of Certiorari

Aug. 20, 1982—Brief in Opposition to Petition for Writ of Certiorari

Oct. 4, 1982—Order granting Petitions for Writs of Certiorari in Nos. 81-2147 and 81-2188 consolidated

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

PAYSON COMMUNITY OF YAVAPAI-APACHE INDIANS, *Plaintiff,* -vs- THE STATE OF ARIZONA, a body politic; and THE STATE LAND DEPARTMENT OF THE STATE OF ARIZONA; and JOHN M. LITTLE, individually and as Acting Commissioner of the State Land Department of the State of Arizona; and SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation; *Defendants.*	Civil Action No. CIV 79-187 PHX CAM COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF

For their claim against the Defendants, Plaintiff alleges:

1. This is an action for permanent injunctive relief, seeking to enjoin Defendants from any further effort to continue in proceedings as to the Plaintiff pursuant to Arizona Revised Statutes, Title 45, Chapter 1, Article 6, or any other State law, or from attempting to apply State law or jurisdiction to Plaintiff or its property and from otherwise interfering with the Plaintiff or its property; for declaratory relief, as authorized by 28 U.S.C. §§ 2201 and 2202; and alternatively for removal of certain proceedings before the State Land Department of the State of Arizona to this Court, as authorized by 28 U.S.C. § 1441.

2. The jurisdiction of this Court is invoked pursuant to Article III of the Constitution of the United States of America, 28 U.S.C. §§ 1331, 1362, 2201 and 2202, and 28 U.S.C. § 1441. This action arises under the Constitution, treaties and laws of the United States. The amount in controversy exceeds $10,000, exclusive of interest and costs.

3. Venue is in the Phoenix Division of the United States District Court for the District of Arizona, pursuant to 28 U.S.C. § 1391 because one or more of the Defendants reside in or have their principal place of business in Maricopa County, Arizona, and the State proceeding giving rise to a portion of this Complaint is pending in Maricopa County, Arizona, and pursuant to Rule 1(b), Local Rules of General Application for the United States District Court for the District of Arizona.

4. Plaintiff, PAYSON COMMUNITY OF YAVAPAI-APACHE INDIANS, is located on the Payson Indian Reservation in Gila County, Arizona. It is a sovereign Indian Tribe recognized by the United States of America (hereinafter referred to as "United States"). The Tribe owns and occupies a Reservation consisting of approximately eighty-five acres which is held in Trust for the Tribe by the United States. The Reservation is presently located within the boundaries of the State of Arizona and is within a much larger aboriginal territory, occupied by the Tribe since time immemorial, encompassing millions of acres in the Southwest.

5. Defendant, SALT RIVER VALLEY WATER USERS' ASSOCIATION is an Arizona corporation doing business within the State of Arizona, (hereinafter referred to as "Defendant" or "SRV").

6. The STATE OF ARIZONA (hereinafter referred to as "State") is a body politic within the United States of America, authorized by the Congress of the United States to enact a State Constitution and to become admitted to the Union, subject to certain conditions, by the Enabling Act, Act of June 20, 1910, c. 310, 36 U.S. Stat. 557, 568-579,

dated the 10th day of December, 1910. The Territory enacted a Constitution, subject to the conditions set forth in the Enabling Act, and was admitted as the 48th State of the Union on February 14, 1912.

7. The Defendant STATE LAND DEPARTMENT is a Department of the State of Arizona.

8. The Defendant, JOHN M. LITTLE, is the Acting Commissioner of the State Land Department and Plaintiff seeks leave of the Court to amend this Complaint when and if a permanent Director is appointed and confirmed.

9. The enabling Act, Section 20, paragraph Second, reads in part "That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title . . . to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that until the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States; . . . that no taxes shall be imposed by the State upon lands or property therein belonging to or which may hereinafter be acquired by the United States or reserved for its use . . .". The Act also provides that the State shall not tax lands which ". . . have been granted or acquired as aforesaid or as may be granted or confirmed to any Indian or Indians under any act of Congress, . . ." and ". . . that all such lands shall be exempt from taxation by such State so long and to such extent as Congress has prescribed or may hereinafter prescribe."

10. The Arizona Constitution, Article XX, paragraph Fourth, states in part "The people inhabiting this State do agree and declare that they forever disclaim all right and title . . . to all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through or from the United States or any prior sovereignty, and that, until the title of

such Indian or Indian tribes shall have been extinguished, the same shall be, and remain, subject to the disposition and under the absolute jurisdiction and control of the Congress of the United States."

11. The Arizona Constitution, Article XX, paragraph Fifth, states in part that "... no taxes shall be imposed by this State on any lands or other property within an Indian reservation owned or held by any Indian; ..." and that the State shall not tax "... lands as have been granted or acquired as aforesaid, or as may be granted or confirmed to any Indian or Indians under any act of Congress."

12. The Plaintiff received the document attached hereto and made a part hereof, and marked for identification as Exhibit "A" (hereinafter referred to as "Notice") by mail on or about the 5th day of February, 1979, pursuant to a Petition to Determine Conflicting Water Rights filed by the Defendant SRV on or about the 29th day of April, 1974, a copy of which is attached hereto and made a part hereof, and marked for identification as Exhibit "B".

13. The Notice purports to be made pursuant to State law and further purports to require the Tribe to take certain actions and pay certain money or fees by a date certain concerning its property or to suffer "... possible loss of said water rights for failure to comply ..." with the proceeding referenced in Exhibit "A" pursuant to Arizona law.

14. The Notice was purportedly served by the State Land Department, when actually the Notice, the costs of such Notice and exclusive custody and control of such Notice was in Defendant SRV.

15. Defendant SRV has made no significant effort in that proceeding concerning the Petition, Exhibit "B", since filing it on the 29th day of April, 1974, except for the Notice, Exhibit "A", mailed by it.

16. The Tribe does not know the nature of the Notice, Exhibit "A", or proceedings from which it purports to be issued, but alleges that such Notice and proceedings are administrative in character and are inapplicable, defective and void as to the Tribe.

17. The requirement of the payment of money or fees as set forth in the Notice is confiscatory and unreasonable and is in the nature of a tax to which the Tribe and its property are immune, and are prohibited by the Constitution, laws and treaties of the United States, the Enabling Act and the Constitution of the State of Arizona.

18. The Tribe and its property, including water and water rights, are subject only to Tribal law and certain specific provisions of the laws, treaties and Constitution of the United States, and owned by the Tribe, and is the subject of a Trust relationship with the United States.

19. The Tribe and its property are immune from and are not subject to the law or jurisdiction of the State. The Tribe has not consented, and by this action does not consent, to waive its immunity or that the State has jurisdiction over or that State law applies to the Tribe or its property, or to be served with Notice, Exhibit "A", through its Tribal Chairman or Attorney.

20. Determination of the priority and extent of the Federal Trust and Tribal water rights held for or by the Plaintiff involves substantial and important questions arising under the Constitution, laws and treaties of the United States.

21. That an actual and irreconcilable controversy exists between the Tribe and the Defendants, from which controversy the Tribe seeks injunctive, declaratory and other relief from this Court.

22. The actions of the Defendants threaten irreparable harm and injury as a result of the unlawful actions which threaten loss of Tribal property, including water rights, and the imposition of confiscatory fees which are in the nature

of taxes, and there is no adequate remedy by which Plaintiff can be protected from such threatened harm and injury except through grant by this Court of the declaratory and injunctive relief herein requested.

23. The Tribe makes only a limited appearance before this Court for purposes of such Declaration and Relief and does not consent to be sued or to a change in the nature of this action by this limited appearance.

24. The State has no in personam or subject matter jurisdiction over the Plaintiff or its property, including its water rights.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that the State of Arizona has no subject matter or in personam jurisdiction over the Plaintiff or its property, including its water rights, in the proceedings which are the subject matter of this action.

2. Declare that the Plaintiff and its property, including its water rights, are immune from and are not subject to the law or jurisdiction of the State, and that the Plaintiff has not consented to waive its immunity, has not consented to the jurisdiction of the State over it or its property, including its water rights, and has not consented that the State law applies to the Plaintiff or its property, including its water rights.

3. Declare that the Notice, Exhibit "A", and proceedings represented by Exhibit "B" attached hereto are administrative, inapplicable, defective and void as to the Plaintiff, and that Defendants have no jurisdiction in such proceeding to make any determination affecting any water rights of the Plaintiff, and that Defendants are acting in excess of their authority and jurisdiction.

4. Declare that the Enabling Act conditions the entry into the Union of the State of Arizona and prohibits the State from applying its laws to or attempting to control the property of the Plaintiff, including its water rights, and from taxing the Plaintiff or its property, including its water rights.

5. That the Constitution of the State of Arizona prohibits the State from applying its laws to or attempting to control the property of the Plaintiff, including its water rights, and from taxing the Plaintiff or its property, including its water rights.

6. Declare that the Notice, Exhibit "A", and the Petition, Exhibit "B" are part of an administrative procedure and not a "civil action" within the meaning of 28 U.S.C. 1441. In the alternative, should this Court declare that such Notice and Petition are a "civil action" within the meaning of 28 U.S.C. 1441, the Plaintiff requests that this Court treat the appropriate portion of the Plaintiff's limited appearance as a Petition for Removal pursuant to 28 U.S.C. 1441 and to remove the proceeding to this Court for further consideration.

7. Permanently enjoin the Defendants from any further effort to continue its proceedings, from attempting to apply State law, from attempting to exercise its jurisdiction, from determining the nature and extent of the Plaintiff's water rights, or from otherwise interfering with the Plaintiff and its property.

8. For Plaintiff's costs herein incurred, together with reasonable attorney fees.

9. For such other and further relief as may be necessary or proper.

DATED, this 7th day of March, 1979.

SPARKS & SILER, P.C.
4234 Winfield Scott Plaza
Suite 1
Scottsdale, Arizona 85251

By /s/ Joe P. Sparks
Joe P. Sparks
Attorneys for the Plaintiff,
Payson Community of Yavapai-Apache Indians

STATE OF ARIZONA
County of Maricopa } ss.

MELTON CAMPBELL, being duly sworn, upon oath deposes and says that he is the Tribal Chairman of the PAYSON COMMUNITY OF YAVAPAI-APACHE INDIANS; that he has read the foregoing Complaint for Declaratory Judgment and Permanent Injunctive Relief; and that the statements contained therein are true to the best of his knowledge, except those statements made upon information and belief, and as to those, he believes them to be true.

/s/ Melton Campbell
Melton Campbell

SUBSCRIBED AND SWORN to before me this 7th day of March, 1979.

/s/ Toni K. Grucky
Notary Public

My commission expires:

My Commission Expires Feb. 5, 1980

STATE OF ARIZONA
County of Maricopa } ss.

JOE P. SPARKS, being first duly sworn, upon his oath deposes and says:

I am one of the members of the law firms of SPARKS & SILER, P.C., the attorneys for the plaintiffs in the above entitled action; I have read the foregoing complaint and the statements are true to the best of my knowledge, information and belief; and as to such matters therein alleged upon information and belief, I believe them to be true.

/s/ JOE P. SPARKS
Joe P. Sparks
Attorneys for Plaintiff,
Payson Community of Yavapai-Apache Indians

SUBSCRIBED AND SWORN to before me this 7th day of March, 1979

/s/ TONI K. GRUCKY
Notary Public

My Commission Expires:

My Commission Expires Feb. 5, 1980

ARIZONA STATE LAND DEPARTMENT
NOTICE

TO ALL CLAIMANTS, USERS OF THE WATERS OF THE SALT RIVER AND ITS TRIBUTARY WATERSHED AREA ABOVE GRANITE REEF DAM, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARY WATERSHED AREA:

A. The State Land Department, pursuant to the provisions of Arizona Revised Statutes, Title 45, Chapter 1, Article 6, hereby gives NOTICE the Department will conduct proceedings for the taking of testimony relating to the determination of the relative rights of the various claimants to the right of use of the waters of the above described river system.

B. In compliance with the law, the Department is enclosing a form entitled "Statement of Claimant"; this form when executed, is required to be filed with the State Land Department together with accompanying statutory fees. The fee schedule is hereinafter set forth in this notice.

C. Claimants are hereby NOTIFIED that on the dates and places set forth in this notice (below)* the Department will accept the "Statement of Claimant" (testimony) concerning claimant's rights to use of the waters of the river or supply.

D. The "Statement of Claimant" is required by law to be verified before a Notary Public, or by an authorized Officer of the State Land Department.

E. The "Statement of Claimant" required by this proceeding is in addition to any other statutory requirements relating to water.

F. The attention of claimant is directed to the provisions of Title 45, Chapter 1, Article 6, ARS relating to his rights and responsibilities and the possible loss of said water rights for failure to comply in this proceeding. A copy of

said law will be made available for examination at the time and places set forth below for the taking of testimony.

G. "Statement of Claimant" forms may be filed at any of the following Arizona State Land Department Field Office locations or the State Land Department in Phoenix on the dates indicated during regular office hours (8:00 a.m. to 5:00 p.m.), unless extended or changed by Order of the State Land Department.

(The dates shown below are all in calendar year 1979)

*GLOBE, ARIZONA Gila County Building 1400 East Ash Street	*PAYSON, ARIZONA Payson Women's Club Building 510 West Main Street
March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28.	March 15, 16, 19, 20, 23, 28, 29, 30.
April 12, 13, 16, 17, 19, 20, 23, 24, 25, 26.	April 2, 3, 6, 9, 11, 12, 13, 16, 17, 18, 19, 20.
*SHOW LOW, ARIZONA Chamber of Commerce Bldg. South 17th Drive and West Deuce of Club's Road	*PHOENIX, ARIZONA State Land Department 1624 West Adams St. (Main office) 3rd Floor, Water Rights Division Phone (602) 255-4629
March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28.	March 15, 16, 19-23, 26-28.
April 12, 13, 16, 17, 18, 19, 20, 23, 24, 25.	April 12, 13, 16-20, 23-26. May 1-4, 7-11.

THE TAKING OF TESTIMONY MAY BE ADJOURNED FROM TIME TO TIME AND FROM PLACE TO PLACE BY THE DEPARTMENT FOR THE CONVENIENCE OF THE PERSONS INTERESTED.

All adjournment schedules will be posted at the location of the place for taking of testimony and at the offices of the State Land Department, Room 308, 1624 West Adams, Phoenix, Arizona 85007. Any information concerning same may be obtained by calling 255-4629.

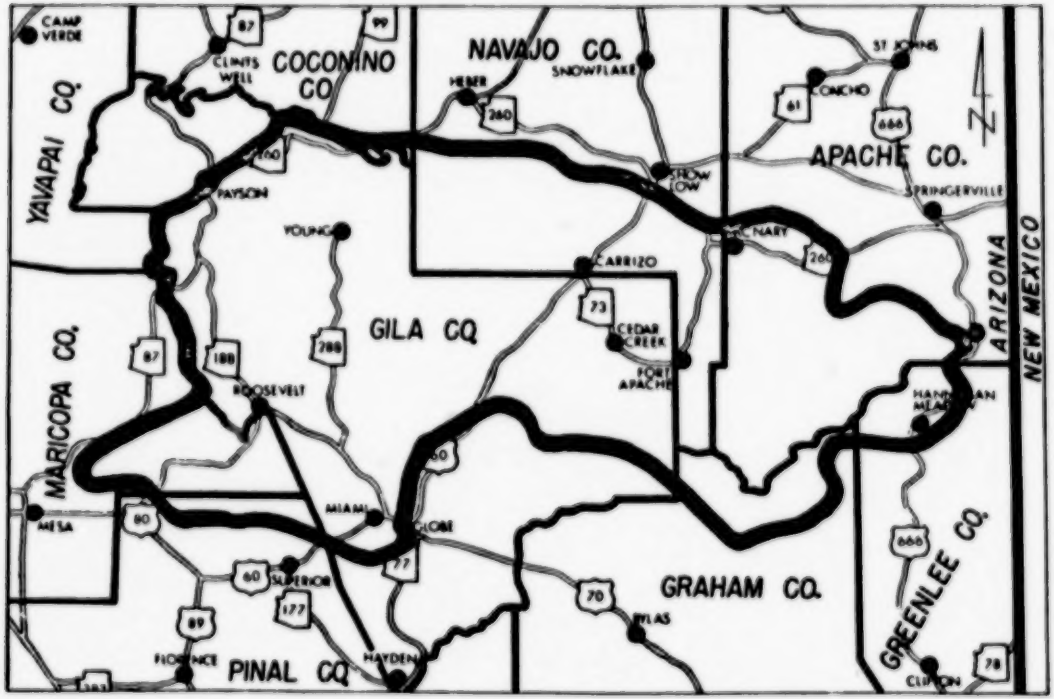
H. Claimants who are unable to file their statement in person on the dates and at the locations listed above, may mail the "Statement of Claimant" form with required fees, to the State Land Department during the interim of March 5, 1979 to midnight, June 30, 1979, unless the time for filing is extended by Order of the State Land Department.

I. FEE SCHEDULE:
At the time of filing, a county recording fee of $2.00 shall be paid for each separately filed "Statement of Claimant". In addition to the county recorder fee, the following fee(s) shall be paid at the time of filing:

1. For irrigated land, a fee of twelve cents ($0.12) for each acre of irrigated lands up to and including one hundred (100) acres, and ten cents ($0.10) of each acre of irrigated lands in excess of one hundred (100) acres. The minimum fee is two dollars and fifty cents ($2.50).
2. For power purposes, the applicant is advised to contact the Department.
3. For any other character of claim to water, a fee of five dollars ($5.00).

J. The original Order, authorizing the publication of this "NOTICE" and approving the "Form" (Statement of Claimant) is on file at the offices of the State Land Department. Any questions concerning the same, may be directed to the State Land Department at the locations set forth above or by calling (602) 255-4629.

Salt River And Its Tributary Watershed



ARIZONA STATE LAND DEPARTMENT

ARIZONA STATE LAND DEPARTMENT
1624 West Adams
Phoenix, Arizona 85007

STATEMENT OF CLAIMANT

(Leave Blank)

File No. _____

Filed: _____ at _____ M
(date) (time)

IN THE MATTER OF DETERMINATION OF RELATIVE RIGHTS TO THE USE OF WATERS OF THE SALT RIVER AND ITS TRIBUTARY WATERSHED ABOVE GRANITE REEF DAM, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARY WATERSHED.

The State Land Department has enclosed with the accompanying Notice this form on which claimant shall present as required, the particulars of his claim of right to the subject waters. All applicable portions must be completed. A separate Statement of Claimant must be submitted for each source or point of diversion of public water unless those waters are commingled prior to use. A map published by the United States Geological Survey or a map of equal standard shall be submitted with this Statement showing on the face of the map the particulars of point of diversion, place of use and other pertinent information.

(Print or type. If more space is required, use explanatory at end of form, or attachment.)

1. Name of Claimant: _____
(Last) (First) (M.I.)

_____
(Address, City, State, Zip) (Telephone No.)

2. State the nature of the right or use on which claim is based: (indicate, and attach supporting documentation)

A. ____ Right to surface water initiated by beneficial use prior to June 12, 1919. Indicate registry number if previously submitted under Water Rights Registration Act _____.

B. ____ Court Decreed Water Right. Cite Title and Date of Case ____ Cause No. _____ County _____.

C. ____ Application for Permit to Appropriate Water filed. State Land Department Application No. _____, Permit No. _____, Certificate of Water Right No. _____.

D. ____ Claim of Water Right for a Stockpond. State Land Department Application No. _____.

E. ____ Other. Describe: _____.

3. A. Date of initiation of right: _____.
(Month/Day/Year)

B. Date water first used for beneficial purposes: _____.
(Month/Day/Year)

4. Purpose, annual amount and annual period of use:

Purpose	Amount	Month/Day	Month/Day
Irrigation	_____ ac.ft./gallons	From_____	to_____
Domestic	_____ ac.ft./gallons	From_____	to_____
Stockwater	_____ ac.ft./gallons	From_____	to_____
Municipal	_____ ac.ft./gallons	From_____	to_____
Power	_____ ac.ft./gallons	From_____	to_____
Mining	_____ ac.ft./gallons	From_____	to_____
Recreation	_____ ac.ft./gallons	From_____	to_____
Wildlife	_____ ac.ft./gallons	From_____	to_____
Other Uses	_____ ac.ft./gallons	From_____	to_____

5. A.(1) If for irrigation purposes, describe place of use: (also indicate on map)

Township (N/S)	Range (E/W)	Section	Legal Subdivision	No. of Acres
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

(2) If land reclaimed over period of years, indicate schedule and amount of land reclaimed first and each subsequent year(s): __
_____

5. A.(3) Indicate kind of crops cultivated: _____
Character of soil: _____

B. If for domestic purposes, number of persons: _____, or families: _____.

C. If for stockwater purposes, number and kind of stock watered: _____

D. If for municipal purposes, population to be served, and estimate of future requirements: _____

_____

E. If for power purposes, describe type of plant and capacity : __

_____

F. If for mining purposes, describe purpose of use, location and charracter of the mine(s) to be served: _____

_____

G. If for recreational purposes, describe: _____

_____

H. If for wildlife purposes, including fish, describe: _____

_____

I. If for other purposes, describe: _____

_____

6. A. Direct source of public water diverted: _____ tributary to _____ on the _____ watershed.

B. Point of Diversion (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

C. Place of use (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

7. State *all other* sources of water supply *not* described in *Question 6* of this form.

A. Type of Source: _____.

B. Location of Source (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

C. If other source is well, list following:

(1) Date well construction began: _____ (Month/Day/Year); Date well placed in use: _____ (Month/Day/Year).

(2) Location (10 acre subdivision) (indicate on map): _____ ¼ _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base Meridian, County of _____.

(3) State Land Department Intent to Drill, File No. _____, or Application for Permit No. _____.

(4) State whether free flowing or pump: _____. If pump, list type of pump and capacity: _____.

(5) Casing depth _____ ft. Total well depth _____ ft. Diameter of casing _____ inches.

(6) Depth to water: _____ ft. (Static Level)

(7) Annual amount pumped, or otherwise extracted: _____ Ac.Ft./Gallons

(8) State purpose of use: _____.

(9) Indicate annual period of use: _____ (Month/Day) to _____ (Month/Day).

8. Water storage reservoir and/or diverting works:

A. Location (indicate on map): _____ ¼ _____ ¼, Section _____, Township _____ (N/S), Range _____ (E/W), Gila and Salt River Base and Meridian, County _____. Ownership _____.

B. Name of storage reservoir and/or diverting works (if known): _____.

C. Maximum capacity: _____ Ac.Ft.

D. Maximum depth of water: _____ ft.

E. (1) Year construction began: _____.

(2) Year construction completed: _____.

(3) Date water first stored: _____ (Month/Year).

F. If dam, list following:

(1) Construction material: _____.

(2) Maximum Length: Top _____ ft.; Bottom _____ ft.

(3) Maximum Width: Top _____ ft.; Bottom _____ ft.

(4) Maximum Height: _____ ft.

G. If diverting works, describe: _____.

9. Distribution works:

A. If ditch or canal:

(1) Date construction began: _____ (Month/Day/Year).

Date construction completed: _____ (Month/Day/Year).

(2) Length of ditch or canal to first place of use: _____ ft., total length of ditch or canal: _____ ft.

(3) Top width: _____ ft.; Bottom width: _____ ft.

(4) Grade (slope) of ditch: ___ ___.
(5) If ditch or canal owned and/or operated by an association or company or such other entity, list name of association or company or such other entity: _____.

B. If pipeline:
(1) Type: _____ (i.e., aluminum, steel, etc.)
(2) Diameter: _____ inches.
(3) Length of pipeline to first place of use: _____ ft. and total length of pipeline: _____ ft.
(4) Grade (slope) of pipeline: ___ ___.

C. If other, describe: _____
_____.

10. Enlargement(s) of storage reservoir and/or diverting and/or distributing works.

A. Date begun: _____.
(Month/Day/Year)
Date completed: _____.
(Month/Day/Year)

B. Describe details of enlargement(s): _____
_____

C. Dimensions of works as originally constructed and as enlarged: _____
_____

Explanatory

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(continued on the next page)

_____

_____

_____

_____

_____

_____

_____

(if more space is required, attach separate sheet(s)

STATE OF ARIZONA
County of _____ } SS

VERIFICATION

_____, _____

(please print Claimant-Affiant's name) (Claimant-Affiant representative's name)

being first duly sworn, deposes and says; That the affiant, or its duly authorized representative, possesses the knowledge and the authorization to execute this verification as to the correctness and truthfulness of the matters set forth in the "Statement of Claimant", except as to those matters alleged upon information and belief, and as to those matters believes them to be true and correct.

For Corporations, Partnerships, Associations, etc.

_____
Claimant-affiant representative's signature

Attest: _____
Claimant-affiant representative's signature

SEAL

_____
Claimant-affiant signature

_____
Claimant-affiant signature

Subscribed and sworn to before me this __day of_____, 19__.

_____
Notary Public or authorized Officer of the State Land Department

My Commission expires

_____

EXHIBIT B

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

IN THE MATTER OF THE DETERMINATION OF CONFLICTING RIGHTS TO THE USE OF WATER FROM THE SALT RIVER ABOVE GRANITE REEF DAM AND ITS TRIBUTARIES INCLUDING TONTO CREEK, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARIES. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW the SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation, and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, by its Articles of Incorporation and by agreement with the United States of America is charged with the duty of and is engaged in the delivery of water to all of the land having a valid water right situated within the Salt River Reservoir District.

II.

That the rights to the use of water upon land situated within the Salt River Reservoir District have been duly adjudicated and approved by that certain decree commonly referred to as the Kent Decree in the case of *Hurley vs. Abbott*, No. 4564 in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

III.

That as a result of the said Kent Decree and the appropriations made by the Petitioner and the United States of America for and on behalf of the Petitioner's shareholders prior to June 20, 1919, the date of the passage of the State Water Code, there has been appropriated by the Petitioner's shareholders and others all of the water of the Salt River and the Verde River and all of the tributaries thereto above Granite Reef Dam; that all of said appropriated waters, since their respective dates of appropriation, have been and continue to be beneficially used by Petitioner's shareholders and others.

IV.

That, notwithstanding that all of the waters of the Salt River and its tributaries above Granite Reef Dam, including Tonto Creek, have been lawfully appropriated and are now being put to beneficial use, your Petitioner is informed and believes and therefore alleges that from time to time from June 20, 1919 to the present, other diversions and uses of water have been made and are being made from the Salt River and its tributaries, including Tonto Creek, for irrigation and other purposes; that said diversions of water have been made without any legal right and have been made contrary to the laws of the State of Arizona and contrary to the State Water Code of the State of Arizona, all of which diversions and uses are in conflict with and result in damage to your Petitioner's shareholders and the other landowners having valid appropriative rights to the use of such water by reason of the resulting diminished supply of the Salt River.

V.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from the Salt River and its tributaries has been made for the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, which said land is more particularly described by

township and range in Exhibit "A", attached hereto and by this reference made a part hereof and which said land is further shown on the map attached hereto, marked Exhibit "B" and by this reference made a part hereof.

VI.

That a determination of the relative rights of the various claimants to the waters of the Salt River and its tributaries in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245, is justified by reason of the large number of claimants to establish the legal rights of each.

WHEREFORE, your Petitioner respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245.

DATED this 26th day of April, 1974.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By /s/ R. J. McMULLIN
R. J. McMullin
General Manager

STATE OF ARIZONA
County of Maricopa } ss.

On this the 26th day of April, 1974, before me, the undersigned Notary Public, personally appeared R. J. McMULLIN who acknowledged himself to be the General Manager of the SALT RIVER VALLEY WATER USERS' ASSOCIATION, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ DON E. SMITH
Notary Public

My Commission Expires May 3, 1975

III. *Salt River Pima-Maricopa Indian Community v. State of Arizona, et al. Salt River Valley Water Users Association Intervenor*, No. CIV 79-185, CA 80-5189

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CAUSE NO. CIV 79-185 PHX VAC

Date *Description*

Mar. 7, 1979—Complaint filed

Mar. 19, 1979—Defendants State of Arizona and Intervenor Salt River Valley Water Users' Association filed motions to dismiss complaint

June 27, 1979—Order setting cause for hearing on September 21, 1979 at 2 p.m.

Sept. 12, 1979—Motion of the United States to file an amicus curiae brief with memorandum and order granting United States leave to file

Sept. 21, 1979—Hearing held on all motions to dismiss

Oct. 1, 1979—Memorandum of the United States concerning service of process

Oct. 11, 1979—Salt River Valley Water Users' Association opposition to United States memorandum concerning service of process

Jan. 21, 1980—Order issued dismissing complaint

Jan. 25, 1980—Judgment that complaint and action were dismissed without prejudice

Feb. 4, 1980—Plaintiff's Motion for Order Enjoining State Proceeding Pending Resolution of Post-trial Motions and Appeal; Plaintiff's Motion to Amend Judgment

Feb. 15, 1980—Hearing on Motions to Amend Judgment and Motion to Enjoin State Proceedings; Order Denying Motion to Enjoin State Proceedings

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES (Cont.)

Date *Description*

Feb. 29, 1980—Plaintiff's notice of appeal filed

May 18, 1981—Emergency Motions for Substitution of Parties and for Stay of State Court Order

May 28, 1981—Order Denying Emergency Motions for Substitution of Parties and Stay of State Court Order

July 15, 1981—Appeal argued before the Ninth Circuit

Feb. 23, 1982—Opinion of the Court in *San Carlos Tribe v. Arizona* was issued

IN THE SUPREME COURT OF THE UNITED STATES
NO. 81-2147

Date *Description*

May 12, 1981—Petition for Writ of Certiorari

Oct. 4, 1982—Order granting Petitions for Writs of Certiorari in Nos. 81-2147 and 81-2188 consolidated

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, *Plaintiff,* vs. THE STATE OF ARIZONA AND JOHN M. LITTLE, Acting Commissioner of the Arizona State Land Department, *Defendants.*	No. CIV 79-185 PHX COMPLAINT

I.

The plaintiff is an Indian Community with a governing body duly recognized by the Secretary of the Interior. A controversy exists between the plaintiff and the defendants, State of Arizona and John M. Little, Acting Commissioner of the Arizona State Land Department arising under the Constitution, laws or treaties of the United States. This is an action for declaratory and injunctive relief under 28 U.S.C. §§ 1331 and 1332. The matter in controversy exceeds the value of $10,000 exclusive of interest and costs. This Court's jurisdiction is based upon 28 U.S.C. §§ 1331 and 1362.

II.

The plaintiff occupies and has jurisdiction over land in Maricopa County, Arizona, which was reserved from the public lands of the United States by President Rutherford B. Hayes by order dated June 14, 1879, issued under the authority of the Act of February 28, 1859. Appurtenant to

this land is a reserved right to such water from the Salt River as is required to develop the reservation for all suitable economic and domestic purposes. This water right is a property created under Federal law.

III.

The defendant State of Arizona, and its' agent John M. Little, Acting Commissioner of the State Land Department, are presently proceeding to exercise definitive jurisdiction over plaintiff's water right in the Salt River. It is undertaking this jurisdiction in a State Land Department proceeding initiated by a petition filed with it by the Salt River Valley Water Users' Association, an Arizona corporation. Copies of the Water Users' petition and the notice of the proceeding served upon the plaintiff by the defendant State Land Department are attached to this complaint as Exhibits A and B.

IV.

The defendants are without subject matter jurisdiction over the plaintiff's water rights and personal jurisdiction over the plaintiff for the following reasons:

(a) The plaintiff is a sovereign which is not subject to State jurisdiction absent consent conferred by an act of Congress and Congress has not consented to State jurisdiction;

(b) The defendants are precluded from jurisdiction over plaintiff's reserved property rights by Paragraph Second, Section 20 of the Enabling Act of June 20, 1910, 36 Stat. 557, 568-579; and by Paragraph Fifth, Article XX, of the Constitution of Arizona.

V.

The undertaking of jurisdiction by the defendants over the plaintiff and its property rights, as alleged above, will cause the plaintiff immediate and irreparable harm for which it will not have an adequate remedy at law.

WHEREFORE, plaintiff prays that the Court issue a preliminary injunction prohibiting the defendants from exercising jurisdiction over plaintiff and its water rights pending this action and that it enter judgment declaring that the defendants lack such jurisdiction and enjoining them permanently from exercising it, and that it grant such other relief as may be just.

MARKS, SHEA & WILKS

By /s/ PHILIP J. SHEA
Philip J. Shea
Attorney for Plaintiff

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

IN THE MATTER OF THE DETERMINATION OF CONFLICTING RIGHTS TO THE USE OF WATER FROM THE SALT RIVER ABOVE GRANITE REEF DAM AND ITS TRIBUTARIES INCLUDING TONTO CREEK, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARIES. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW the SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation, and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, by its Articles of Incorporation and by agreement with the United States of America is charged with the duty of and is engaged in the delivery of water to all of the land having a valid water right situated within the Salt River Reservoir District.

II.

That the rights to the use of water upon land situated within the Salt River Reservoir District have been duly adjudicated and approved by that certain decree commonly referred to as the Kent Decree in the case of *Hurley vs. Abbott*, No. 4564 in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

III.

That as a result of the said Kent Decree and the appropriations made by the Petitioner and the United States of America for and on behalf of the Petitioner's shareholders prior to June 20, 1919, the date of the passage of the State

Water Code, there has been appropriated by the Petitioner's shareholders and others all of the water of the Salt River and the Verde River and all of the tributaries thereto above Granite Reef Dam; that all of said appropriated waters, since their respective dates of appropriation, have been and continue to be beneficially used by Petitioner's shareholders and others.

IV.

That, notwithstanding that all of the waters of the Salt River and its tributaries above Granite Reef Dam, including Tonto Creek, have been lawfully appropriated and are now being put to beneficial use, your Petitioner is informed and believes and therefore alleges that from time to time from June 20, 1919 to the present, other diversions and uses of water have been made and are being made from the Salt River and its tributaries, including Tonto Creek, for irrigation and other purposes; that said diversions of water have been made without any legal right and have been made contrary to the laws of the State of Arizona and contrary to the State Water Code of the State of Arizona, all of which diversions and uses are in conflict with and result in damage to your Petitioner's shareholders and the other landowners having valid appropriative rights to the use of such water by reason of the resulting diminished supply of the Salt River.

V.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from the Salt River and its tributaries has been made for the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, which said land is more particularly described by township and range in Exhibit "A", attached hereto and by this reference made a part hereof and which said land is further shown on the map attached hereto, marked Exhibit "B" and by this reference made a part hereof.

VI.

That a determination of the relative rights of the various claimants to the waters of the Salt River and its tributaries in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245, is justified by reason of the large number of claimants to establish the legal rights of each.

WHEREFORE, your Petitioner respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245.

DATED this 26th day of April, 1974.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By /s/ R.J. McMULLIN
R. J. McMullin
General Manager

STATE OF ARIZONA
} ss.
County of Maricopa

On this the 26th day of April, 1974, before me, the undersigned Notary Public, personally appeared R. J. McMullin who acknowledged himself to be the General Manager of the SALT RIVER VALLEY WATER USERS' ASSOCIATION, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ DON E. SMITH
Notary Public

My Commission Expires May 3, 1975

ARIZONA STATE LAND DEPARTMENT
NOTICE

TO ALL CLAIMANTS, USERS OF THE WATERS OF THE SALT RIVER AND ITS TRIBUTARY WATERSHED AREA ABOVE GRANITE REEF DAM, EXCLUDING THE VERDE RIVER AND ITS TRIBUTARY WATERSHED AREA:

A. The State Land Department, pursuant to the provisions of Arizona Revised Statutes, Title 45, Chapter 1, Article 6, hereby gives NOTICE the Department will conduct proceedings for the taking of testimony relating to the determination of the relative rights of the various claimants to the right of use of the waters of the above described river system.

B. In compliance with the law, the Department is enclosing a form entitled "Statement of Claimant"; this form when executed, is required to be filed with the State Land Department together with accompanying statutory fees. The fee schedule is hereinafter set forth in this notice.

C. Claimants are hereby NOTIFIED that on the dates and places set forth in this notice (below)* the Department will accept the "Statement of Claimant" (testimony) concerning claimant's rights to use of the waters of the river or supply.

D. The "Statement of Claimant" is required by law to be verified before a Notary Public, or by an authorized Officer of the State Land Department.

E. The "Statement of Claimant" required by this proceeding is in addition to any other statutory requirements relating to water.

F. The attention of claimant is directed to the provisions of Title 45, Chapter 1, Article 6, ARS relating to his rights and responsibilities and the possible loss of said water rights for failure to comply in this proceeding. A copy of said law will be made available for examination at the time and places set forth below for the taking of testimony.

G. "Statement of Claimant" forms may be filed at any of the following Arizona State Land Department Field Office locations or the State Land Department in Phoenix on the dates indicated during regular office hours (8:00 a.m. to 5:00 p.m.), unless extended or changed by Order of the State Land Department.

(The dates shown below are all in calendar year 1979)

*GLOBE, ARIZONA Gila County Building 1400 East Ash Street	*PAYSON, ARIZONA Payson Women's Club Building 510 West Main Street
March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28.	March 15, 16, 19, 20, 23, 28, 29, 30.
April 12, 13, 16, 17, 19, 20, 23, 24, 25, 26.	April 2, 3, 6, 9, 11, 12, 13, 16, 17, 18, 19, 20.
*SHOW LOW, ARIZONA Chamber of Commerce Bldg. South 17th Drive and West Deuce of Club's Road	*PHOENIX, ARIZONA State Land Department 1624 West Adams St. (Main office) 3rd Floor, Water Rights Division Phone (602) 255-4629
March 15, 16, 19, 20, 21, 22, 23, 26, 27, 28.	March 15, 16, 19-23, 26-28.
April 12, 13, 16, 17, 18, 19, 20, 23, 24, 25.	April 12, 13, 16-20, 23-26. May 1-4, 7-11.

THE TAKING OF TESTIMONY MAY BE ADJOURNED FROM TIME TO TIME AND FROM PLACE TO PLACE BY THE DEPARTMENT FOR THE CONVENIENCE OF THE PERSONS INTERESTED.

All adjournment schedules will be posted at the location of the place for taking of testimony and at the offices of the State Land Department, Room 308, 1624 West Adams, Phoenix, Arizona 85007. Any information concerning same may be obtained by calling 255-4629.

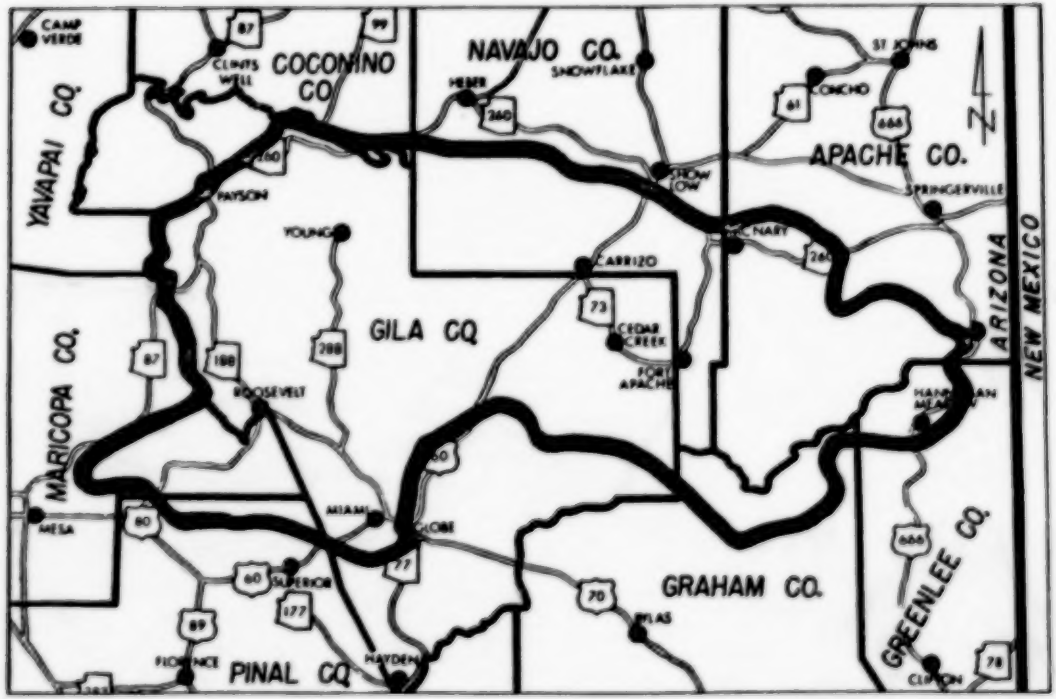
H. Claimants who are unable to file their statement in person on the dates and at the locations listed above, may mail the "Statement of Claimant" form with required fees, to the State Land Department during the interim of March 5, 1979 to midnight, June 30, 1979, unless the time for filing is extended by Order of the State Land Department.

I. FEE SCHEDULE:
At the time of filing, a county recording fee of $2.00 shall be paid for each separately filed "Statement of Claimant". In addition to the county recorder fee, the following fee(s) shall be paid at the time of filing:

1. For irrigated land, a fee of twelve cents ($0.12) for each acre of irrigated lands up to and including one hundred (100) acres, and ten cents ($0.10) for each acre of irrigated lands in excess of one hundred (100) acres. The minimum fee is two dollars and fifty cents ($2.50).
2. For power purposes, the applicant is advised to contact the Department.
3. For any other character of claim to water, a fee of five dollars ($5.00).

J. The original Order, authorizing the publication of this "NOTICE" and approving the "Form" (Statement of Claimant) is on file at the offices of the State Land Department. Any questions concerning the same, may be directed to the State Land Department at the locations set forth above or by calling (602) 255-4629.

Salt River And Its Tributary Watershed



ARIZONA STATE LAND DEPARTMENT

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 80-5189

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY,
Plaintiff-Appellant,

vs.

STATE OF ARIZONA and JOHN M. LITTLE, Acting Commissioner of the ARIZONA STATE LAND DEPARTMENT,
Defendant-Appellees.

EMERGENCY MOTIONS FOR SUBSTITUTION OF PARTIES AND FOR STAY OF STATE COURT ORDER

The appellant, Salt River Pima-Maricopa Indian Community, moves pursuant to Rule 43, Rules of Appellate Procedure, for an order substituting the Honorable Stanley Z. Goodfarb, Judge of the Superior Court of Arizona sitting in Maricopa County, for John M. Little, Acting Commissioner of the Arizona State Land Department. The reason for this substitution is that the jurisdiction over Indian water rights asserted by the State of Arizona, which is the subject of this appeal, has been transferred by State law from Land Commissioner Little to Judge Goodfarb.

The Salt River Pima-Maricopa Indian Community also moves pursuant to Rule 8, Rules of Appellate Procedure, for an order staying the order of the Honorable Stanley Z. Goodfarb dated February 23, 1981, requiring Indian tribes, such as the Salt River Pima-Maricopa Indian Community, to file a notice of appearance and a notice of intention to

file a claim by June 1, 1981. Under the terms of Judge Goodfarb's order, an Indian tribe which does not so commit itself to the jurisdiction of the State court by June 1, 1981, is thereafter foreclosed from asserting any claim in that State water adjudication proceeding.

There is no legitimate State objective or any valid benefit to be achieved by requiring the Indian tribes to make a quick election. The United States Justice Department is not required to file claims on behalf of Indian tribes until January 4, 1982. Until these claims are presented the Indian tribes cannot know whether they will be adequately presented. The stated reason for forcing the tribes to make a quick commitment is that the Superior Court needs to know who is in and who is out. But the State has declared its intention to enlarge the proceedings to include all claimants to rights in several related rivers and the Superior Court has set no deadline for this action. The action is therefore open-ended as to its scope and parties and will be for many months to come. The only real purpose to be served by requiring Indian tribes to appear on June 1 is to force them into the case before they can decide whether they should be in the case. It is a clear case of irrevocable harm without reason.

The Salt River Community moved in the District Court for a stay of State proceedings before filing the notice of appeal and this motion was denied at oral argument.

The Salt River Pima-Maricopa Indian Community therefore requests:

1. That the June 1 filing deadline be deferred until this motion can be fully heard and decided; and

2. That it not be required to appear in the State proceeding until this appeal is concluded or, alternatively, until thirty (30) days after the United States Justice Department has filed a claim on its behalf.

The following exhibits are attached to this motion:

Exhibit A. 1979 Session Laws of Arizona, pp. 422-423, which includes that part of Ch. 139, § 39, which enacts A.R.S. § 45-258.

Exhibit B. Minute Entry in Maricopa County Superior Court issued by Honorable Stanley Z. Goodfarb in Cause No. W-1 extending time for U.S. to file claims for Indian tribes to January 4, 1982, and requiring Indian tribes to make appearances on or before June 1, 1981.

Exhibit C. Transcript of Proceedings of Maricopa County Superior Court proceedings in Cause No. W-1 on February 23, 1981.

Exhibit D. Letter dated March 2, 1981, from counsel for Salt River Pima-Maricopa Indian Community to Honorable Stanley Z. Goodfarb.

Exhibit E. Letter dated March 23, 1981, from Honorable Stanley Z. Goodfarb to counsel for Salt River Pima-Maricopa Indian Community.

Respectfully submitted on May 12, 1981.

MARKS, SHEA & WILKS

By /s/ PHILIP J. SHEA

Philip J. Shea
114 West Adams, Suite 200
Phoenix, Arizona 85003
Attorneys for Salt River
Pima-Maricopa Indian
Community

AFFIDAVIT

STATE OF ARIZONA }
County of Maricopa } ss.

Philip J. Shea, being duly sworn, deposes and says that he is one of the attorneys for the Salt River Pima-Maricopa Indian Community and makes this Affidavit pursuant to Rule 6(h), Rules of the Ninth Circuit Court of Appeals; that the Salt River Community is confronted with an order of the Superior Court of Maricopa County Arizona, entered on February 23, 1981, to commit itself to participate in the upper Salt River general water adjudication, Cause No. W-1, no later than June 1, 1981, or be forever barred from appearing in that case; that this motion is an emergency motion only to the extent that it seeks to defer that deadline pending the decision on its request that it not be required to intervene until the adjudication of the underlying appeal or, alternatively, thirty (30) days after the Justice Department has filed a claim on its behalf.

/s/ PHILIP J. SHEA
Philip J. Shea

Subscribed and sworn to before me on May 12, 1981.

/s/ KRISTI RAE KNOX
Notary Public

My Commission Expires Mar. 9, 1982

MEMORANDUM

I

SUBSTITUTION OF PARTIES

This action was filed on March 7, 1979, to seek an injunction against a pending State administrative adjudication of the Salt River Pima-Maricopa Indian Community water rights. The administrative forum was the State Land Department and the named defendant was its Commissioner. Following the filing of the Complaint, and on April 24, 1979, the Legislature amended the State water code to transfer jurisdiction over water adjudications to the Superior Court, the State's trial court of general jurisdiction. (Exh. A) Pursuant to this Act the proceeding involving the upper Salt River was transferred to the Superior Court of Maricopa County. It was assigned by the Supreme Court to the Honorable Stanley Z. Goodfarb and has been designated as cause no. W-1.

Under these circumstances, substitution of Judge Goodfarb for Commissioner Little is appropriate under Rule 43(b).

II

STAY OF STATE COURT PROCEEDINGS

In the interim between the entry of judgment in this case and the filing of the Notice of Appeal the Salt River Indian Community moved for an order enjoining the State adjudication proceedings pending appeal. (R.#17, p. 137) The District Court denied the motion by docket entry on February 25, 1980, the day of the oral argument and there is no record of the reasons for the denial because of the law.

Recent exigent circumstances compel us now to seek specific limited injunctive relief which shall not to any extent delay or hamper the proceedings pending in Judge Goodfarb's court. We seek at least temporary relief from an order issued on February 23, 1981, which has the effect of requiring the Salt River Indian Community to submit itself irrevocably to the jurisdiction of the Superior Court by June 1, 1981, or be forever foreclosed from participation in

those proceedings. Because of rather unusual circumstances this recent mandate forces the Salt River Indian Community to make a fatal election before it can make the election intelligently.

The Justice Department has appeared in the Superior Court for the express purpose of presenting the water claims of federal agencies and beneficiaries. The beneficiaries include four Indian tribes including the Salt River Indian Community. The Justice Department pointedly refuses to commit itself in writing to the proposition that the Salt River Indian Community has a *Winters* right in the water of the Salt River to the extent of its practicably irrigable acreage.

A hearing was held in the Superior Court on February 23, 1981, on a motion by the Justice Department to extend the date for filing claims of federal agencies and beneficiaries. The minute entry for that hearing is attached as Exhibit B and the transcript is attached a Exhibit C. The motion was granted and the time for the filing of federal claims by the Justice Department and federal beneficiaries was extended to January 4, 1982. The Superior Court also ordered, however, that federal beneficiaries (i.e. Indian tribes) could not file claims on January 4, 1982, or at any time, unless they filed a notice of intention to do so by June 1, 1981.

The Salt River Indian Community is deeply apprehensive at the prospect of litigating its most valued property rights before a State forum. The modern history of the Pimas and Maricopas in the Salt River Valley is the story of persistent encroachment by the white settlers on Indian land and their antagonism toward Indian values. Advancing the cause of the white settlers against the Indians has always been a cornerstone policy of the State Government. Indeed, at this time there is pending before this Court a suit by the Governor of Arizona against the Secretary of Interior arising from official State resentment over the manner in which the Secretary has allocated Central Ari-

zona Project water between the State's Indian and Anglo citizens. And we are not comforted by the fact that the State Supreme Court has designated as the Judge for this Salt River case one who previously worked for many years as an Assistant State Attorney General.

The Salt River Indian Community must balance its apprehension over subjecting itself personally to the State forum with concern over the likelihood of adequate representation by the Justice Department. The Department simultaneously represents conflicting interests. It represents the Forest Service and Bureau of Land Management in their conflicting claims to the Salt River. But more than that it is defending the United States in an action in the Court of Claims by the Salt River Indian Community for damages for having deprived it of its rights to water from the Salt River. In this Court of Claims case the Justice Department has already damaged the Salt River Community's interests in the Superior Court case by refusing to seek a negotiated resolution of the water rights issue and filing a pleading that amounts to a general denial of the Community's water right claims. In an attempt to rationalize that conflict they have privately stated that they will assert the Community's *Winters* rights but they refuse to put it in writing. Under all these circumstances the Community now faces a draconian choice.

Although not a party to the State proceedings we have sought relief from the June 1 deadline by an informal plea to Judge Goodfarb. We wrote him on March 2, 1981 (Exh. D) requesting that we not be required to make our decision until after the Justice Department files its papers on January 4, 1982. Judge Goodfarb responded on March 23, 1981 that we must show our hand by June 1 so that he can maintain "knowledgeable control" of the proceedings. (Exh. E)

The stated reason given by the Superior Court to require Indian tribes to make an irrevocable commitment by June 1 is that the Court needs to know who is in and who is out. But the Superior Court in fact will not know until many months from now who is in and who is out. The Arizona Department of Water Resources has announced its intention to expand the upper Salt River proceedings to include the lower Salt River, the Verde River, the Aqua Fria River and the Gila River because they are all part of the same system. That Department advised the Superior Court at the February 23 hearing that it was seeking $2 million from the Arizona Legislature to give notice to claimants along these rivers. (Exh. C, p. 23) The Superior Court advised the Department to prepare any orders necessary for an enlargement of the proceedings (Exh. C, p. 25) but that has not been done. No deadline is proposed for any action toward enlarging the proceedings. So we have countless months to go before we know who is in and who is out. The June 1 deadline imposes a burden on the upper Salt River tribes and that is its only effect.

The State Court proceedings should be stayed to the extent that they require the Salt River Pima-Maricopa Indian Community to make an irrevocable election as to whether it should be a party to the Superior Court proceedings on or before June 1, 1981; and the deadline for this election should be extended to the time that this appeal is decided but not earlier than thirty (30) days after the United States has filed a claim on its behalf.

Respectfully submitted,

MARKS, SHEA & WILKS

By /s/ PHILIP J. SHEA

Philip J. Shea
114 West Adams, Suite 200
Phoenix, Arizona 85003
Attorneys for Salt River
Pima-Maricopa Indian
Community

CERTIFICATE OF SERVICE

I, Philip J. Shea, one of the attorneys for the Salt River Pima-Maricopa Indian Community, certify that on May 12, 1981, I caused to be delivered three copies of this Emergency Motions for Substitution of Parties and for Stay of State Court Order, to:

Honorable Stanley Z. Goodfarb
Judge of the Superior Court
201 West Jefferson
Phoenix, Arizona 85003
Telephone: 602/262-3471

Mr. M. Byron Lewis
Jennings, Strouss & Salmon
111 West Monroe
Phoenix, Arizona 85003
Attorneys for the Salt River
Valley Water Users' Association
Telephone: 602/262-5878

Mr. Russell A. Kolsrud
Assistant Attorney General
200 State Capitol, West Addition
1700 West Washington
Phoenix, Arizona 85007
Attorney for the State of Arizona
Telephone: 602/255-3562

/s/ PHILIP J. SHEA
Philip J. Shea

C. Prior to filing the report with the court or the master as provided in subsection B, the state water engineer shall prepare a preliminary report. The state water engineer shall give notice to each water claimant that the preliminary report is available for inspection and comment. Upon expiration of the period provided for timely comment, the state water engineer shall revise the preliminary report as may be appropriate and shall file the report with the court or the master in accordance with subsection B. The commission shall adopt such rules and regulations as may be necessary to ensure that adequate notice is given, that the preliminary report is sufficiently available for inspection by the water claimants and that provisions are made for adequate time and procedure for comment on the preliminary report.

§ 45-257. Hearings, report of master; final judgment by court; administration and enforcement of decree

A. The master shall:

1. After due notice, conduct such hearings and take such testimony as shall be necessary to determine the relative water rights of each claimant.

2. Prepare and file with the court a report in accordance with rule 53(g) of the Arizona rules of civil procedure, which shall contain findings of fact and conclusions of law. Each claimant shall have the right to file with the court written objections to the master's report within one hundred eighty days of the date on which the master's report was filed with the court.

3. Maintain under his control all records and documents at such locations as may be designated by the court.

B. The court, upon review of the master's report and in accordance with rule 53 of the Arizona rules of civil procedure, shall:

1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source provided, when rights to the use of water or dates of appropriation have previously been determined in a judgment or decree of a court, accept the determination of such rights and dates of appropriation as found in the judgment or decree unless such rights have been abandoned.

2. Establish, in whatever form determined to be most appropriate by the court, one or more tabulations or lists of all water rights and their relative priorities on the river system and source.

3. Refer the final judgment or decree to the commission for administration and enforcement under the continuing jurisdiction of the court.

4. Make appropriate orders to ensure that the entire record of the general adjudication is preserved in an accessible and usuable form.

5. Record a certified copy of the final judgment or decree in each county within the geographical scope of the general adjudication which shall constitute constructive notice of the contents of the judgment or decree.

§ 45-258. Transfer of proceedings of state land department to superior court

A. Upon the effective date of this article, the state land department shall immediately transfer all proceedings then pending under §§ 45-231 through 45-245 and all fees paid thereunder to the superior court in the county in which the largest number of potential claimants resides. The transfer shall be affected in the following manner:

1. The department shall file with the superior court the

original petition previously filed pursuant to § 45-231, subsection A, which shall then be deemed to be the petition in the general adjudication and which shall be recaptioned in accordance with § 45-252, subsection D.

2. The department shall file with the superior court a certified copy of the notice mailed to all potential claimants pursuant to § 45-234, which shall be adopted by the court as the summons required by § 45-253, subsection A, paragraph 1.

3. The department shall file with the superior court all affidavits of publication which were obtained in connection with all publications made pursuant to §§ 45-232 and 45-234.

4. The department shall file with the superior court its records, together with all supporting documents, of the names and addresses of all of the known potential claimants to whom the notice and statement of claimant were mailed pursuant to §§ 45-234 and 45-235.

5. The department shall file with the superior court all statements of claimant which have been or are thereafter filed with it pursuant to § 45-235, which shall then be deemed to be the statements of claimant of the particular water claimant in the general adjudication. For proceedings which were commenced before the effective date of this article but for which the date for filing statements of claimant falls after the effective date of this article:

(a) The department shall continue to accept the statements claimant but shall immediately file them with the superior court.

(b) The superior court shall, as to any filing fees paid pursuant to § 45-108, subsection B, adjust the fees in accordance with the amounts of the fees set forth in § 45-254, subsection F, and either reimburse the claimant or direct the claimant to pay any adjusted balance due to the superior court.

B. In this section, a reference to §§ 45-231 through 45-245 refers to any such section as was in effect prior to the effective date of this section.

§ 45-259. Rules governing general adjudications

The general adjudication is governed in all respects by the Arizona rules of evidence, the Arizona rules of civil procedure and any other procedural rules generally applicable to civil proceedings, except that the specific provisions of this article govern if they conflict with the Arizona rules of civil procedure or any other procedural rules generally applicable to civil proceedings. Any proceedings previously initiated under prior law and transferred to the superior court for adjudication are subject to the provisions of this article only after the transfer has been effected.

§ 45-260. General adjudication fund

A. The state treasurer shall maintain a fund known as the general adjudication fund. All money appropriated to effect service of process and notices on potential claimants pursuant to § 45-253, subsection A, paragraphs 2 and 3, and all reimbursements to the commission pursuant to § 45-253, subsection A, paragraph 4 shall be deposited in such fund.

B. Monies in the general adjudiction fund are exempt from the provisions of § 35-100, relating to lapsing of appropriations.

EXHIBIT B

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE:	GENERAL ADJUDICATION OF THE RIGHTS TO USE WATER IN THE SALT RIVER WATERSHED ABOVE GRANITE REEF DAM. EXCLUDING THE VERDE RIVER TRIBUTARY	W-1
IN RE:	IN THE MATTER OF THE DETERMINATION OF CONFLICTING RIGHTS TO THE USE OF WATER FROM THE VERDE RIVER AND ITS TRIBUTARIES, INCLUDING OAK CREEK, BEAVER CREEK, WEST CLEAR CREEK, AND THE EAST VERDE RIVER	W-2

February 23, 1981
Phoenix, Arizona

BEFORE: THE HONORABLE STANLEY Z. GOODFARB,
Superior Court Judge

George F. Senner
Ralph E. Hunsaker
Russ Kolsrud — Atty. General
M. Byron Lewis
William Stephens
Steven E. Carroll
Dept. of Justice
10th & Penn. Ave., N.W.
Washington, D. C. 20530
Joseph Sparks
Richard Wilks
Z. Simpson Cox

John S. Schaper
William H. Swan
Tom Galbraith
Robert C. Brauchli
John Weldon
Al Shrago
William H. Veeder
818 - 18th St. N.W.
Washington, D. C. 20006
Water Rights Division
222 N. Central Ave. Suite 800
Phoenix, AZ 85004

8:55 a.m. This is the time set for the hearing on all pending motions in cases, W-1, W-2 and WC-1. Mr. Hunsaker, Mr. Carroll, Mr. Swan, Mr. Schaper, Mr. Galbraith, Mr. Stephens, Mr. Weldon, Mr. Shrago, Mr. Kolsrud, Mr. Jackson, Mr. Veeder, Mr. Sparks, Mr. Siler and Mr. Brauchli appear.

Robert Ferrara, Court Reporter, is present.

The first motion heard was the United States of America's Motion for an Extension of Time. Mr. Carroll and Mr. Kolsrud set forth their positions.

IT IS ORDERED granting the U.S.A.'s Motion for Extension of Time. The time for filing of claims by U.S. agencies, beneficiaries and other bearing relationship to the U.S. will be given until January 4, 1982 to file their claims. However, by June 1, 1981, the U.S. for and in behalf of its agencies, beneficiaries and others whom it appears for as trustee or such persons, parties or tribes for whom the Department of Justice of the United States of America has appeared but who desire to represent themselves shall file a notice of their appearance in this court and a notice of intention to file a claim by January 4, 1982. Their claims will not have to be filed until January 4, 1982. Failure to file such a notice and intention to file by June 1, 1981 will close off rights to be a claimant in this case.

FURTHER ORDERED that Mr. Carroll with the input from Mr. Sparks will prepare and submit an order to that affect to this Court for approval, settlement and signature.

Mr. William Veeder specifically advises the Court of his presence, the presence of Robert C. Brauchli and Ronny Lupe, chairman of White Mountain Apache Tribe and that it wishes this Court to be aware that such tribe will not appear and it does not want the Department of Justice to appear for it as it believes this Court is without jurisdiction. The Court advises Mr. Veeder, Brauchli and Lupe that they

could appear and reserve the issue of jurisdiction and not run the risk of what non-appearance could mean. The Court further advises that they should reconsider and have until June 1, 1981 to appear. If they fail to appear by then, the Court will not be sympathetic to allowing them in later if and when its jurisdiction is upheld and will deem their failure to file will foreclose the tribe and all its members' rights.

Mr. Don Maughan speaks with regard to the status of this matter and the program to proceed with these cases with all deliberate speed.

IT IS ORDERED that Mr. Hunsaker prepare such orders with regard to the Salt, Verde and Gila rivers to implement the program suggested by Mr. Maughan including service.

The Buckeye Irrigation Company's Motion to Intervene and to File a Petition for Adjudication of Additional Rights in WC-1, the Gila River case, is heard at this time. John Schaper, Ralph Hunsaker and Stephen Carroll set forth their positions on this matter.

IT IS ORDERED granting the Motion and for Mr. Schaper to prepare and submit an order for the Court's signature.

FURTHER ORDERED that the Court Reporter, Robert Ferrara, shall prepare and submit a transcript of this morning's proceedings. The cost of this will be borne by the Department of Water Resources.

9:45 a.m. Court stands at recess.

8:55 a.m. This is the time set for the hearing on all pending motions in cases, W-1, W-2, and WC-1. Mr. Hunsaker, Mr. Carroll, Mr. Swan, Mr. Schaper, Mr. Galbraith, Mr. Stephens, Mr. Weldon, Mr. Shrago, Mr. Kolsrud, Mr. Jackson, Mr. Veeder, Mr. Sparks, Mr. Siler and Mr. Brauchli appear.

Robert Ferrara, Court Reporter, is present.

The first motion heard was the United States of America's Motion for an Extension of Time. Mr. Carroll and Mr. Kolsrud set forth their positions.

IT IS ORDERED granting the U.S.A.'s Motion for Extension of Time. The time for filing of claims by U.S. agencies, beneficiaries and others bearing relationship to the U.S. will be given until January 4, 1982 to file their claims. However, by June 1, 1981, the U.S. for and in behalf of its agencies, beneficiaries and others whom it appears for as trustee or such persons, parties or tribes for whom the Department of Justice of the United States of America has appeared but who desire to represent themselves shall file a notice of their appearance in this Court and a notice of intention to file a claim by January 4, 1982. Their claims will not have to be filed until January 4, 1982. Failure to file such a notice and intention to file by June 1, 1981 will close off rights to be a claimant in this case.

FURTHER ORDERED that Mr. Carroll with the input from Mr. Sparks will prepare and submit an order to that affect to this Court for approval, settlement and signature.

Mr. William Veeder specifically advises the Court of his presence, the presence of Robert C. Brauchli and Ronny Lupe, chairman of White Mountain Apache Tribe and that it wishes this Court to be aware that such tribe will not appear and it does not want the Department of Justice to appear for it as it believes this Court is without jurisdiction. The Court advises Mr. Veeder, Brauchli and Lupe that they could appear and reserve the issue of jurisdiction and not run the risk of what non-appearance could mean. The Court further advises that they should reconsider and have until June 1, 1981 to appear. If they fail to appear by then, the Court will not be sympathetic to allowing them in later if and when its jurisdiction is upheld and will deem their failure to file will foreclose the tribe and all its members' rights.

Mr. Don Maughan speaks with regard to the status of this matter and the program to proceed with these cases with all deliberate speed.

IT IS ORDERED that Mr. Hunsaker prepare such orders with regard to the Salt, Verde and Gila rivers to implement the program suggested by Mr. Maughan including service.

The Buckeye Irrigation Company's Motion to Intervene and to File a Petition for Adjudication of Additional Rights in WC-1, the Gila River case, is heard at this time. John Schaper, Ralph Hunsaker and Stephen Carroll set forth their positions on this matter.

IT IS ORDERED granting the Motion and for Mr. Schaper to prepare and submit an order for the Court's signature.

FURTHER ORDERED that the Court Reporter, Robert Ferrara, shall prepare and submit a transcript of this morning's proceedings. The cost of this will be borne by the Department of Water Resources.

9:45 a.m. Court stands at recess.

EXHIBIT C

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE: GENERAL ADJUDICATION OF THE RIGHTS TO USE WATER IN THE SALT RIVER WATERSHED ABOVE GRANITE REEF DAM. EXCLUDING THE VERDE RIVER TRIBUTARY	W-1
IN RE: IN THE MATTER OF THE DETERMINATION OF CONFLICTING RIGHTS TO THE USE OF WATER FROM THE VERDE RIVER AND ITS TRIBUTARIES, INCLUDING OAK CREEK, BEAVER CREEK, WEST CLEAR CREEK, AND THE EAST VERDE RIVER	W-2

February 23, 1981
Phoenix, Arizona

BEFORE: THE HONORABLE STANLEY Z. GOODFARB,
Superior Court Judge

TRANSCRIPT OF PROCEEDINGS
MOTIONS

PREPARED FOR: BY: ROBERT M. PERRARA
Superior Court Reporter

APPEARANCES:

John S. Schaper, Esq., Buckeye Irrigation Company

William Swan, Esq., Department of Interior

Steven L. Carroll, Esq., Department of Justice

Ralph Hunsaker, Esq., Department of Water Resources

George Senner, Esq., Department of Water Resources

Donald Maughan, Esq., Department of Water Resources

John Weldon, Esq., Salt River Valley Water Users' Association

Alvin H. Schrago, Esq., Phelps Dodge Corporation

Russell Kolsrud, Esq., Attorney General's Office

Thomas Galbraith, Esq., Inspiration Consolidated Copper Company

William Stephens, Esq., Peoria, Tolleson, Safford, Casa Grande, Glendale, Scottsdale, Phoenix, Mesa, Chandler, Gilbert

Daniel Jackson, Esq., Department of Interior

PROCEEDINGS

THE COURT: Good morning. We are, basically, set for hearing this morning the two water cases. The first is the one proceeding in Maricopa County which is W-1, the General Adjudication of the Rights to use water in the Salt River Watershed above Granite Reef Dam Excluding the Verde River Tributary.

In addition, I have also set for hearing a motion in the Pinal County case which is WC-1, which is a General Adjudication of all Rights to use water in the Gila River System and Source which had previously been set in front of Judge Marks as to which I have been assigned that case on December 30, 1980. There is a motion in the file by Mr. Schaper, the attorney for the Buckeye Irrigation Company. I thought we would take care of both of them at the same time — well, one after another, anyway.

The first matter we will take care is the W-1 case.

Since we have got so many people here, let's find out who we have got and who represents who so we, at least, have a list of who is appearing in this particular matter. We will start with Mr. Hunsaker. You represent the State Water Rights?

MR. HUNSAKER: The Department of Water. Also here from the Department is Mr. George Duke Senner and Don Maughan.

THE COURT: Mr. Carroll, you represent the United States Government?

MR. CARROLL: The United States. Mr. Swan from the Department of Interior is sitting here at the table with me.

MR. SCHAPER: John Schaper, Buckeye Irrigation Company.

MR. GALBRAITH: Inspiration Consolidated Copper Company.

MR. STEPHENS: City of Safford, City of Casa Grande, Glendale, Scottsdale, Phoenix, City of Mesa, City of Chandler, City of Gilbert, Peoria and the City of Tolleson.

MR. WELDON: John Weldon, Salt River Valley Water Users' Association.

MR. SCHRAGO: Al Schrago, Phelps Dodge Corporation.

MR. KOLSRUD: Russ Kolsrud, Attorney General's Office.

THE COURT: Mr. Shay or Mr. Wilkes, are you here representing somebody or are you just spectators?

MR. SHAY: Just observing, Your Honor.

MR. JACKSON: Dan Jackson with the Department of Interior also.

THE COURT: Let's take the gentleman in front. Mr. Veeder?

MR. VEEDER: Yes. We are not making an appearance, Your Honor.

THE COURT: All right, thank you. Mr. Sparks and Mr. Schlier?

MR. SPARKS: We are not making an appearance at the moment, Your Honor.

THE COURT: In the back row, Robert Brauchli?

MR. BRAUCHLI: I am the attorney for the White Mountain Apache Tribe. We are not making an appearance.

THE COURT: Fine. The gentleman with you?

MR. LUPE: My name is Ronnie Lupe. I'm the chairman of the White Mountain Apache Tribe.

THE COURT: The matter we have to take care of, first of all, at this time, is a motion for the extension of time to file a claim filed by the United States of America through Mr. Carroll.

Previously, this Court had granted to Mr. Carroll a time extension to file a claim through December 30th of this year provided that certain monthly reports were made. Those reports were made.

In addition, Mr. Carroll was given the opportunity to ask for an additional period of time and he called me about Christmastime and announced that he needed some additional time and I said that I would not close off his time simply because we would not have time to hear the motion. And, this was the first available time that interfaced with his schedule and my schedule to hear the motion.

So, Mr. Carroll, I have your motion. I have only one opposition to it and, that is, by the Attorney General's Office by Mr. Kolsrud.

Mr. Carroll, do you want to be heard?

MR. CARROLL: Your Honor, I will be brief. I will stand, basically, on the reports that I have made pursuant to the earlier order and the motion that I filed in late December seeking a further extension of time, however, I would point out to the Court that it is now clear that these proceedings are going to be expanded dramatically and that it is going to take some time for the Department of Water Resources and the other parties to process the information that other claimants and the United States will be filing.

I do not believe that the requested extension will delay the orderly processing of this information and the Department of Water resources has, I believe, agreed not to oppose the motion for extension of time as I stated in my memorandum in support of that extension.

THE COURT: I do not have a problem with that. The only thing that bothers me, with candor, I will ask Mr. Kolsrud to comment on it.

Mr. Kolsrud brings up a matter that, in certain cases, I guess, some appeals to the Ninth Circuit, this Court, it has been indicated, is moving too slow in handling this determination and that, I suppose, the basis of that is, if they could get it over to the Federal Court it would move with greater dispatch and that, therefore, that is a good reason why, I believe, it was Judge Cordova's determination that it should be overturned. Somehow we cannot move fast enough or as fast as the Federal Courts can move.

MR. CARROLL: May I speak to that, Your Honor?

THE COURT: Yes, I'd be interested in that.

MR. CARROLL: In those proceedings before Judge Cordova, the United States filed an amicus brief in support of the Tribe's position. As a condition of your June order you required the United States not to make the assertion in a brief in the Ninth Circuit that those proceedings are moving too slowly. The United States has not filed an amicus brief in those proceedings in the Ninth Circuit.

There are other cases arising in Montana and the Navajo Nation case in which the United States may or may not file a brief, however, the United States has never made the representation to any court that this proceeding is moving too slowly. We have not filed a brief in those proceedings.

I, specifically, in my — I believe it was in my first report, I stated specifically to the Court and as to the second report the Court ordered, the United States will not utilize the extension granted by the Court for submission for claims to indicate that the State of Arizona is not moving diligently in these proceedings.

I stand on that statement, Your Honor.

THE COURT: I understand that. I was not accusing you, Mr. Carroll, at all.

The problem I have had is, I have tried to move this thing as rapidly as I can. Due to the complexities of it and, probably, the fact that it is difficult from a hydrological standard to separate one watershed from another and that has now been recognized, I, really, don't know how I can fulfill my obligation to do this appropriately without giving major water claimants or potential water claimants a sufficient period of time to do the kind of hydrological studies that will be necessary. But, if there is someone here who feels, be they observers representing Tribes and appearing here as observers or having appeared already, that this case is not moving fast enough to suit them or that the Federal Courts can move it faster, I would, at this time, request those attorneys or others to make their views known.

(No response.)

Let me ask Mr. Kolsrud where that information then comes from.

MR. KOLSRUD: May it please the Court, the State of Arizona representing the State Land Department is involved in all the adjudications including the Little Colorado, the Salt, the Verde, the Gila, San Pedro.

We have had direct assaults on our position primarily in the Little Colorado; that the proceedings in the State Courts are not moving fast enough. And, we have had excerpts of oral arguments out of Judge Cordova's court taken from the oral arguments on the motion to dismiss those cases to support a proposition that the adjudication process in the State Courts are not moving fast enough and that position is supported by the United States in the Little Colorado suit. And, just recently the Navajo Nation filed a motion in the Ninth Circuit to consolidate all of the pending appeals up there including the Verde, the Salt and also to include the Tongue River cases from Montana. Last week that motion was denied which alleviates some of the problem as far as this one moving too slowly, but, primarily, it is coming out of that case.

THE COURT: All right. Well, I am just — I would be happy to move this case as rapidly as I can and, if, in fact, it would be necessary and fruitful for me to completely clear my present civil calendar and spend 100% of my time on this case, if this case were ready for it, this Court is prepared to do it. This Court is prepared to bring in a special judge to cover my calendar. This Court is prepared to set up special masters and spend 100% of my time on this case if it can be done fruitfully.

Now, if someone thinks that this case is ready for that now I would like to hear from them.

MR. KOLSRUD: May it please the Court, it is not the position of the State that the case is moving too slowly. It is our position that if we have to face an argument in the Ninth Circuit that it is moving too slowly, at the same time

we are facing continual extensions of time without any conditions attached, that that is causing a problem for us in that case.

THE COURT: I understand then. Well, I do not know how I can add additional conditions over and above what I have asked Mr. Carroll to do and which he has fulfilled. He has been reporting monthly to me. He has, in fact, not asserted a contrary position and about the only thing else that I think is left to do at this point would be to, perhaps, order that while I would grant his motion, I think, that by the first of June I should, at least, have from him or from anyone else that is interested in this case an appearance for those people who are going to appear in this case. It seems to me that I have got to have an appearance instead of having to know who is involved in this case, whether or not their claims have or have not been filed, if, at least, a period so we know who the parties are to this matter, that that should be a cut-off period.

Mr. Carroll, would you have any objection if I would give you until the first of the year to file your claims, but, at least, I need a list of those or an appearance of those who are going to appear either through you or through someone else?

MR. CARROLL: Your Honor, I have no objection to that. I would like to respond to some representations that Mr. Kolsrud made.

I'd like to point out that on the Little Colorado adjudication it was initiated by the Navajo Tribe and named the United States as a defendant in that case. We have not filed a brief in the District Court or in the Court of Appeals in that case either because we are a defendant along with the State.

THE COURT: I am sorry. Okay. You are not talking about the adjudication in the State Court that is presently being handled by Judge Brooks, since the Little Colorado is another one of the —

MR. CARROLL: The Navajo Nation has filed a seeking declaration of their rights in the Little Colorado. It names the United States, the State and numerous other parties as defendants. We have not even filed an answer or any brief in that case.

THE COURT: All right.

MR. CARROLL: As to the second matter, it is clear that I am here as the attorney for the United States and the United States claims include as trustee those water rights of the tribes.

I simply cannot speak for the tribes or their attorneys, as to what their positions may be on such an order or what their position may be as to the jurisdiction of the Court, so on.

THE COURT: I understand that. I do not expect you to, but I do think that I have got to have a cut-off date at some point before the time set for claims to know who we have got and if people do not want to, at least, appear and advise us that they will be filing claims, then, I think, considering the amount of time that they have been allowed to do that, they should be cut off.

The problem is, I think, that, perhaps, you have, and, I don't want to make a determination on that, is that as a trustee for certain tribes, if the tribe does or does not want you to make a claim, you also have a trustee position and that kind of a determination as to what the United States has got to do as a trustee when, perhaps, it's beneficiary is making a decision to the contrary is something, I think, you

will have to resolve within the context of the position of the United States, but would you have a problem with a date of June 1st, for an order requiring everyone who is going to appear, to appear by that date?

MR. CARROLL: No, I would not.

THE COURT: Does anyone else who would have a problem in filing an appearance, if they are going to appear in this action, I am willing to give to the United States and to those who bear a relationship to it either as a beneficiary agency or otherwise to the 1st of January to do the work, to put their claim together, but I do think it is important to require some sort of appearance by the 1st of June so I know who I have got involved in this action.

Let me ask Mr. Sparks back there since I know you are here as an observer, but I also know you represent the San Carlos tribe, to comment on that without it constituting an appearance.

MR. SPARKS: Your Honor, I also represent the Town of — the Apache Tribe at Payson.

THE COURT: I remember that, as well.

MR. SPARKS: And, Your Honor, our clients want to cooperate in the overall resolution of these matters. We do have on-going large scale studies to help gather the data necessary to appear in whatever court has the subject matter of jurisdiction to proceed with these matters and, therefore, we are preparing to appear somewhere.

THE COURT: My personal feeling at this time is that an appearance in this action to protect your rights could be done without waiving any jurisdictional questions that you might have. I want to make sure that anyone who has an interest, has an opportunity to appear without waiving rights, but, kind of, candidly, as the last meeting that we

had where we had observers sticking their head in the door and then moving out because they were not sure they wanted to be noted as involved in this case is the last time that that is going to happen in this case.

So, would you have any difficulty with making your determination of whether or not to appear by the 1st of June or would you need additional time?

MR. SPARKS: We would like to have until January 1st, 1982, Your Honor, to have that decision.

THE COURT: I want to know who I got before the date of the claims. If you are going to be in, I think — is there some reason why you can't make a determination by the 1st of June?

MR. SPARKS: Your Honor, it is a very pragmatic reason. I think that is going to take a great deal of energy on behalf of the Tribe and on the Tribe's behalf in order to prepare the facts and documents necessary for an appearance anywhere.

THE COURT: Well, assuming that all you had to do would be to file an appearance with the claim to be filed by the 1st of January, 1982, would that create a problem? I have got to know who is in this case simply from the notice standpoints.

MR. SPARKS: I appreciate that, Your Honor, and my point goes to the fact that if we do appear and if we are required to contest jurisdiction, the other kind of arguments necessary to clarify the validity of a decision ultimately made by this Court, then, we feel that it is a waste of judicial time and the energy of the various Indian claims to do so before an appellate decision is made as to the subject matter of jurisdiction. That is my only point.

THE COURT: Thank you.

MR. SPARKS: And, if we can appear without waiving those different arguments, then I have no problem with that, but I would prefer not having that complication introduced into the case.

THE COURT: Let me hear from Mr. Wilkes since I know you represent the Salt River Tribe.

MR. WILKES: In addition to what Mr. Sparks says, I think that one of the concerns that we would have is the expansion of this case which affects — I'm not really sure where the River ends now or where the adjudication ends now, but I know if they go farther downstream it will include the Salt River community. I do not think you can begin to prepare a claim based on what the State says it may do and has not done yet.

So, I do not know that you can prepare to put a piece of paper into Court saying, we are going to appear sometime in the future based on the same claim of uncertainty.

THE COURT: All right. Mr. Brauchli, I believe you represent the White Mountain Apache Tribe?

MR. BRAUCHLI: I defer to Mr. Veeder.

MR. VEEDER: Your Honor, we have filed with this Court on June 27th, I think it was, 1980, a statement that the White Mountain Apache Tribe by resolution has declared that it would not submit to jurisdiction. And, that is a position that they have taken. It was taken after a great deal of consideration. And, my statement here, of course, is within the purview of that resolution. I am not appearing, at all. I am simply stating this to the Court predicated upon what you just stated, Your Honor. You want to know by June 1st. I think out of courtesy to this Court the White Mountain Apache Tribe has made its decision; one, that it questions the jurisdiction of this Court; secondly, it is confronted with an existing decree that we are opposed to. We think if we did make an appearance we could be subjected to that decree.

Under those circumstances, Your Honor, we reaffirm our position here — the Tribe reaffirms its position, and we have also provided that in the resolution that we do not choose to be represented by the Department of Justice and we have asked that the Attorney General of the United States respect the Tribe's decision in that regard. Thank you very much.

THE COURT: Mr. Veeder, let me ask you a question, because it does concern me, that in attempting to make a determination of the watersheds of the State, that a major potential claimant does not wish to be involved when a certain portion of the headwaters, obviously, the Salt, may well rise on White Mountain Apache Reservation —

MR. VEEDER: It does rise there, Your Honor.

THE COURT: I understand that. And, the position of the Tribe, while I can understand and respect it, I don't understand why your position with regard to jurisdiction could not be maintained by filing and maintaining that position because of the risk that may be run. You may be perfectly right that I am without jurisdiction and that some other judge, preferably a Federal Court, will have the benefit of trying to make a determination and order of priorities of all the waters of the State of Arizona.

Perhaps, since their judges are paid substantially more than State judges they will come up with a much better solution and, probably, they are far wiser than we are. But, assuming that they should pass that honor and it remains here, I would only suggest that the risk run by the White Mountain Apache Tribe in not making its position known, its claim made, while still defending its right to claim jurisdiction otherwise is a very substantial risk that, in my opinion, need not be taken. It is one that, obviously, they

can take, but when you do not have to gamble the Court has to wonder, considering I have an obligation to make an appropriate determination, one wonders why such a gamble is made.

MR. VEEDER: The gamble, Your Honor, in that connection, I don't believe, is so great.

We are in the position now of being able to state with much exactitude the magnitude of the claims that we are making, that we have for those for the Salt River and its tributaries. We have developed that information. We know with as much exactitude as you can in an inexact business how much water we are claiming, the purposes for which we are going to claim that water and how we intend to manage it.

I think that we would be in the position so this Court will not go blindly down the line without knowing how much we are claiming, there will be a public release, a public statement, as to what is involved and I think that, Your Honor, if you should choose to do so, the decree could be entered taking cognizance of those rights claimed by the Tribe.

It is our view that the Tribe is independent of State law. That if we do submit to State jurisdiction we'd be, for practical purposes, turning over the management of the water resources on the reservation to the State of Arizona. We are proceeding on this and I hope that this statement — I appreciate your concern, Your Honor. It is a hazard with which we have spent a great deal of time considering, but it is also our position that cognizance could be taken in our view by this Court of the magnitude of the claim without submitting to jursidiction.

We believe it is entirely possible with the Secretary of the Interior to be advised in his official capacity as to the magnitude of the claim, and hopefully, we will take cognizance of his responsibility in regard to it.

THE COURT: I, really, do not understand the difference between your — the Court taking cognizance. It seems to the that the White Mountain Apache Tribe will be putting me in a position which I cannot do justice to the White Mountain Tribe. If they think I should take cognizance of their claim when, in fact, it would be appropriate for them to file and maintain their jurisdictional position. I, really, think that the other claimants would be somewhat less than protective of their right if they let the Court take cognizance of the claim when they have not made such a claim reserving their right to object to jurisdiction.

However, I am sure, Mr. Veeder, you have considered all of this for your client and your client has made the determination that this is an appropriate risk which they wish to run.

I just want the record clearly understood at this time that I have set forth for you that I consider this a considerable risk and if the White Mountain Apache Tribe does not take advantage of filing a claim in this action while reserving the right to jursidiction, this Court will not look kindly upon them coming into this case, five, or six or seven years down the road when a Federal Court might have determined that I had jurisdiction and say, Judge, it isn't fair. We have all these people up here and we are going to lose our rights.

I want you and I to understand clearly, Mr. Veeder, what the risks are that your clients run. I think that I will give you until June the 1st to determine whether or not you want to run those risks, but you and I are going to clearly understand that if you make that choice your clients and you will live with that choice.

MR. VEEDER: Thank you, Your Honor. The reason I asked the Chairman of the White Mountain Apache Tribe to be here is that I invited your comment. Now, I want them to know, as I have told them, about the hazards of the position. Thank you.

THE COURT: Well, that is fine. I want us to clearly understand our position and I do want the White Mountain Apache Tribe to know that I think it is essential — well, I think I can do this without them, but I think it would be beneficial to everyone to have them in and that they could reserve their issue of jurisdiction.

Is there anything further on the motion of the United States?

(No response.)

At this time the Court will grant the motion of the United States, however, I will extend the time for the filing of claims by United States agencies and beneficiaries — maybe, Steven, you should give me the correct terminology of who we are reserving rights to. You, probably, know better than I do.

MR. CARROLL: I, at one time, prepared a proposed order which may have some — I do not have a copy of the proposed order.

THE COURT: Agencies, trust beneficiaries, others bearing a relationship to and through the United States will be given until January 1, 1982, in which to file their claims.

However, by June 1, 1981, the United States for and on behalf of those agencies, beneficiaries and others and all such beneficiaries or agencies who want to appear by their own representation other than through the Department of Justice, United States of America, shall file a notice of appearance.

That will be, basically, just the notice of appearance and their claims would not have to be filed until January 1, 1982. But, I do want by the 1st of June, 1981 a filing of notice of everyone who is going to be in this case. Failure to file by that date will close off the rights to be a claimant in this case.

MR. HUNSAKER: I was looking for a calendar and I do not find one. In wonder if January 1, happens to fall on a Sunday, Saturday or holiday? We are so acutely aware of that because we ran into that at the Department on other filing dates. I would like to be sure we are on a court date.

THE COURT: January 1, 1982, is a Friday — wait a minute — let us do it this way —

MR. HUNSAKER: Let's make it December 31st, or whatever you want.

THE COURT: How about January the 4th, 1982?

MR. HUNSAKER: That is fine.

THE COURT: I think that is part of a large religious holiday and that occurs in the latter part of the year. I would not want to interfere with it.

How about making the cutoff at the close of business on January the 4th, 1982, the filing by June 1, which is a Monday, so there is no problem with that.

Mr. Sparks.

MR. SPARKS: Your Honor, I was wondering whether the Court would consider adding to the order the recitation that the tribes can appear in their own behalf claiming their own property rights by January 4th, 1982?

THE COURT: Oh, yes, I intended that to mean that. Either the United States or its beneficiaries it would cover. They could appear either by the filing of the United States or their own independent filing by January 4th, 1982, provided that there is a notice of appearance filed by June 1, 1981.

MR. SPARKS: Yes, Your Honor. The purpose of that request is based on property rights independent of those of the United States, therefore, they are not the trust property.

THE COURT: Are you talking about what they call allotted lands?

MR. SPARKS: No, Your Honor, aboriginal or international property rights, in other words, the last time your order said the tribes claiming on their own behalf and didn't make reference to those claims through the United States.

THE COURT: All right. I would have no problem to allow the tribes to file all of their rights through that. So, if you know the appropriate language that goes with that, perhaps, you can consult with Mr. Carroll and prepare an order for the Court that will cover both. I am sure Mr. Carroll is aware of your positions.

With regard to the status of this particular matter, let me hear from Mr. Hunsaker as to where we are and where we are going while all this is going to occur?

MR. HUNSAKER: I wonder if Your Honor — I could have Mr. Maughan speak to that?

THE COURT: Mr. Maughan, go ahead.

MR. MAUGHAN: Well, of course, the San Pedro and Salt above the Granite Reef filing dates have closed for the general public. The extension being only for the Federal agencies or their beneficiaries right now.

THE COURT: I do not have the authority on the San Pedro case.

MR. MAUGHAN: True.

THE COURT: I do not know whether Mr. Carroll has moved with Judge Borowic —

MR. CARROLL: Yes, Your Honor, I have. It is a different status, but, yes.

THE COURT: All right.

MR. MAUGHAN: Just the Salt —

THE COURT: We have the Salt and —

MR. MAUGHAN: The Verde has also been placed under your jurisdiction, as I understand it. We have been waiting for the motion — the petition of Mr. Schaper to be acted upon before we then undertake to notice all the potential claimants and when the Court reaches that conclusion we will be ready to go ahead with the noticing and mailing to all of the potential claimants, the forms, although, we do need money from the legislature for that, rather, massive mailing which will run in excess of $2,000,000. And, we have introduced a bill to do that. We have the support of a number of leaders including the governor to go ahead with that.

THE COURT: All right. How do you envision, at least, at one time I thought it was your position to try and tie the Salt, the Verde and the Gila together since they all appear to be part of one system? I suppose, the San Pedro and the Santa Cruz are the same?

MR. MAUGHAN: Yes, the San Pedro has not been handled with you. As you indicated, Chief Justice Struckmeyer did transfer to you from another judge the Gila. You have the Salt and the Verde. The indended petition would be to include the Agua Fria and other areas of drainage that have not heretofore been included in any of these adjudications and the lower Santa Cruz.

The idea being that the upper — I mean the lower Santa Cruz, only because there is in Federal Court under Judge Walsh the upper Santa Cruz in an action right now, so, we

would include all of the drainage basin of the Gila excluding the upper Santa Cruz and with the concurrence of the Chief Justice and Judge Borowic The San Pedro would be transferred, the whole Gila drainage basin —

THE COURT: To me?

MR. MAUGHAN: Yes, sir. As we go all the way down to Dome which is the station bearly above the confluence with the Colorado River.

THE COURT: All right. Has there been any consideration, additional consideration, given to the Agua Fria Basin and the Bill Williams River Basin?

MR. MAUGHAN: The Bill Williams would not be undertaken at this time, but the Agua Fria — there are some other small tributaries there that have not been included and the white area of the map that the Judge can see. All of that area would be incorporated into this proposal so there would be no exclusions, whatsoever, from the Gila Basin.

THE COURT: All right. Well, I guess, we will just proceed on that basis. We are going to have to — we will be giving notice, I suppose, on the Verde, probably, have to start giving notice on the Gila.

MR. MAUGHAN: Yes.

THE COURT: Which will take up the rest of the time while we are proceeding with the getting of the claims on the Salt.

MR. MAUGHAN: Yes, I think it would be our intent and concurrence, certainly, with the Court to get those notices out and give approximately nine months for the filing of the statement by claimants.

THE COURT: Could we try to utilize, let's say, January 4, 1982, that date, on those?

MR. MAUGHAN: Yes, Your Honor.

THE COURT: Have them all fit in with the additional figures we are going to allow on the Salt.

MR. MAUGHAN: That would be, I think, manageable.

THE COURT: All right. If you will prepare any orders that are necessary for either the Salt or the Verde with the exception of the extension of time order that Mr. Carroll will prepare, I think that will take care of what we have here unless there is something else that needs to be raised on the Salt or the Verde aspect of it?

MR. SCHAPER: I think you have a motion which is not opposed with regard to — now, I am sitting in Pinal County, as well.

What you desire to do on the WC-1, which is based on the Pinal County case?

MR. SCHAPER: What we are trying to accomplish, what Mr. Maughan just discussed, that is, the expansion of the Gila River proceeding in Pinal County, so, they will encompass the Agua Fria Basin, the Salt between the Granite Reef Dam and the Gila confluence, the lower Santa Cruz and a portion of the Gila upstream from the San Francisco River which involves the Duncan Valley which, for some reason, was not included in the petition filed by Phelps Dodge.

So, in effect, what we are asking is that the Court allow this intervention to expand the scope of those proceedings and, I assume, at that point either Phelps Dodge Corporation or the Buckeye Irrigation Company would then move to change the venue of those proceedings from Pinal County to Maricopa County.

Beyond that point, how you would want to handle it would be a matter that we could address somewhere down the road.

That would leave the only portion of the Gila watershed not included in the Gila or the Salt or the Verde adjudications as the San Pedro and the, what has been referred to as the upper Santa Cruz which is somewhat an undefined area subject to the jurisdiction of the Federal Court in Tucson.

THE COURT: When you talk about the upper Santa Cruz, about where are you?

MR. SCHAPER: Somewhere around Marana is where the cutoff has been made. These red lines and dotted lines indicate the active management areas established by the gound water code and essentially —

THE COURT: Would it be outside of the pumping area in the Marana area, north of the pumping area in Marana?

MR. SCHAPER: I think Mr. Maughan could answer that or Mr. Sonner.

MR. MAUGHAN: The answer is, yes.

THE COURT: Marana Farms has their own pumping staff. Once you get north of that, that is where it, kind of, spreads out and runs up west of Casa Grande —

MR. SCHAPER: Sort of, disappears, diverted over to a cutoff somewhere in this.

THE COURT: It disappears in land subdivisions up there.

MR. SCHAPER: Yes. In any event, we would ask that the jurisdiction of this Court be expanded to include any properties or portions of the watershed of the Santa Cruz which are not now under the jurisdiction of Judge Walsh.

THE COURT: I understand that. Has anyone discussed with Judge Walsh what his feeling is about keeping one island portion of it?

MR. SCHAPER: I will defer to Mr. Hunsaker.

MR. HUNSAKER: Judge, we have not done that at this moment. We felt first it ought to be determined in this Court whether or not this adjudication would be expanded to include that portion of the Santa Cruz and then we would take that matter up with Judge Walsh as to how he felt the handling should occur from that moment.

THE COURT: That is fine by me. I, certainly, would not want to have Judge Walsh think that I am pushing him out of his case nor do I think Judge Walsh would let anyone do that.

MR. HUNSAKER: I agree. That is why we are only asking, at this moment, for that portion of the river that has not been adjudicated by Judge Walsh. I am sure he wouldn't look kindly upon us trying to push him out of that litigation, at all.

THE COURT: Mr. Carroll, since I assume that you are going to being representing the United States in all of these matters, do you have any comment with regard to the procedure that we are going to follow?

MR. CARROLL: I have several questions, Your Honor, I may approach here. Perhaps, my attention wandered for a moment, but it was clear to me that in Mr. Schaper's presentation, he intended that the San Pedro watershed be integrated eventually.

MR. SCHAPER: The pending motion and petition, Your Honor, does not encompass that the Salt or the Verde, because they are already subject to the jurisdiction of this Court—in that regard, I think that is premature at this point.

THE COURT: For some reason, I think, Mr. Carroll, it has been decided by the Supreme Court to leave the San Pedro case the way it is. My guess was that Judge Marks

who had the Gila case, in fact, is a retired judge. It was felt that they would move that case over here. Judge Borowic has the case on the San Pedro which is, perhaps, a bit more unique.

Mr. Hunsaker?

MR. HUNSAKER: I was simply going to say, I don't believe, that, yet, the Supreme Court has considered the matter of the San Pedro. They did the Salt. Judge Marks had that. I don't think they, really, have, yet, considered one way or the other what they might do with the San Pedro.

THE COURT: Well, when they do, if you go out there to comment on it, I would like them to clearly understand that I do not wish—Judge Borowic can keep his part of the case as I am concerned.

MR. MAUGHAN: Could I make a comment, Your Honor?

THE COURT: Yes.

MR. MAUGHAN: Part of the problem I think Mr. Carroll, probably, has it in mind is that the outflow from the San Pedro goes into the Gila Indian Reservation. There is a relationship there that, I don't know, is very easy to separate.

THE COUT: I understand that. They all flow one into another and the problem just gets bigger and more complex.

MR. CARROLL: There has been no mention made yet, Your Honor, about the existence of the Gila decree in Globe, Equity No. 59, in which the Federal Court has continued the jurisdiction. As I understand it, I am not an expert on that decree, however, I understand that the Court has continuing jurisdiction in that decree over, at least, a large portion of the main stream of the Gila River.

MR. SCHAPER: Could I address that question?

THE COURT: Yes.

MR. SCHAPER: I wouldn't necessarily agree with Mr. Carroll about the extent of the Federal Court jurisdiction under Globe Equity 59, but I don't think that is important, really. That decree did not purport to adjudicate any water rights downstream from the Gila Reservation, so, we have all of this area. We have the Agua Fria, the Salt, the Santa Cruz, downstream from the point where the Globe Equity decree ends. So, the areas that would be brought into this proceeding are areas primarily which were not at all affected by Globe Equity except to the extent that that determination would have something to do with the amount of available water. The only area which is not now involved in the Gila River proceedings in Pinal County which might be affected by Globe Equity would be the Duncan Valley in Greenlee County.

THE COURT: All right. Well, there are lots of problems that I can see in the future. There will have to be a lot of interrelationship carried out, but I think the first step is to grant the motion. You do not have any problem with the motion, do you?

MR. CARROLL: I cannot take a position on it, I am sorry. I have not seen the papers on that motion, at all, however—

THE COURT: Does anyone else have a position on it?

(No response.)

In WC-1 we will show the granting of the motion to intervene. Mr. Schaper will prepare and submit an order for the Court's signature.

MR. SCHAPER: Yes, Your Honor.

THE COURT: Anything further on any of these cases? If not, we will just stand at recess at this time.

Thank you, gentlemen.

One other order, in order to keep an appropriate record, at this time I am going to order the court reporter to prepare and submit a transcript of what occurred here today. The cost of that will be borne by the Department of Water Resources.

(Thereupon Court stood at recess.)

I, ROBERT M. FERRARA, Official Court Reporter, do hereby certify that the foregoing pages, numbered 1 through 31, constitute a full, true and accurate typewritten record of my stenographic notes taken at said time and place, all done to the best of my skill and ability.

DATED this 11th day of March, 1981.

/s/ ROBERT M. FERRARA
Robert M. Ferrara
Official Court Reporter

EXHIBIT D

March 2, 1981

Hon. Stanley Z. Goodfarb
Judge of the Superior Court
Central Court Building
201 West Jefferson
Phoenix, Arizona 85003

Dear Judge Goodfarb:

We wish to advise you of our concern with your order of February 23 which requires that rights of Indian tribes to prosecute claims will be foreclosed unless they file a notice of intention to file a claim by June 1. This deadline is severely prejudicial since it requires us to make a commitment before any rational determination can be made as to whether that commitment is in the best interests of our client.

Our client is not presently prepared to undertake the prosecution of its water rights claims in actions pending in the Superior Court. At the same time we have a grave concern as to whether the Justice Department recognizes and is willing properly to assert these claims. We have discussed this matter with Justice Department officials for the purpose of obtaining a clarification of its intentions. We have not yet been advised as to what it plans to do.

We believe that we will be unduly and unnecessarily burdened by being required to commit ourselves until after the Justice Department makes a commitment. We therefore believe that the fair thing to do is to defer any obligation upon our client until after the United States has filed whatever it may file. That will probably be January 4, 1982, or it may be later.

Another factor bearing on the question of the Tribe's involvement in these proceedings is the area of land that is subject to the adjudication. If we do not get involved before June 1, will we be foreclosed even if the scope of the proceedings is enlarged?

I realize that we do not have standing to petition for relief. I do however wish to advise you in this informal manner that we cannot make a reasonable decision before June 1, 1981, because the information on which our decision should be based, i.e. whether the Justice Department will favor or oppose our interests, or whether our interests lie within the scope of the proceedings, may not yet be revealed to us at that time.

Very truly yours,

MARKS, SHEA & WILKS

Philip J. Shea

PJS: av
cc: Counsel of Record

EXHIBIT E

March 23, 1981

Mr. Philip J. Shea
Marks, Shea & Wilks
Attorneys at Law
114 West Adams Street
Phoenix, Arizona 85003

Re: WC-1 Gila River, W-1 Salt River, W-2 Verde River

Dear Mr. Shea:

Receipt is acknowledged of your letter of March 2, 1981.

I have given lengthy consideration to the proposal put forth in your letter but believe that I have extended the time as far as I can go in order to keep this a manageable action. While I understand your problems, I simply cannot understand how an appearance in this case with a later filing of claim can in any way be prejudicial to your client.

It seems to me that I cannot maintain a knowledgeable control of who is to be informed, who is not, who has interest, and who does not unless I know who is in the case and who is not.

I have extended dates continually in order to be fair to those who may have an interest in the litigation. More than ample time has been allotted to them to decide what to do. To just defer these matters some more seems to me unfair to all those who have made an effort to appear and file claims. Also it causes me a substantial disadvantage in trying to manage what I think is a very important determination. For those reasons I believe that I cannot accede to your request.

Yours truly,

STANLEY Z. GOODFARB

IV. *Navajo Nation aka the Navajo Tribe of Indians v. State of Arizona, et al.*, No. CIV 79-276 PCT VAC and Docket Nos. CA 80-5471 and CA 80-5837

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CAUSE NO. CIV 79-276 PHX VAC

Date *Description*

Apr. 17, 1979—Complaint filed

June 4, 1979—Defendant State of Arizona's motion to dismiss and notice of hearing for July 13, 1979

June 7, 1979—Supplemental memorandum of State of Arizona in support of motion to dismiss

July 16, 1979—Amended complaint filed

July 27, 1979—Motion to dismiss complaint by State of Arizona with memorandum of points and authorities

Sept. 11, 1979—Motion for enlargement of time by the United States to answer or otherwise plead

Nov. 5, 1979—Oral argument on Arizona's motion to dismiss

Apr. 18, 1980—Order denying Arizona's motion to dismiss and further ordered staying proceedings pending the trial and determination by the state court of Arizona of the rights of claimants to the waters of the Little Colorado River Watershed

June 12, 1980—Plaintiff filed notice of appeal

July 10, 1980—Plaintiff's motion for certification under 28 U.S.C. § 1292(b)

Aug. 19, 1980—Order issued granting plaintiff's motion for certification under 28 U.S.C. § 1292(b)

Oct. 30, 1980—Order from Ninth Circuit Court of Appeals that the court had denied the State of Arizona's Motion to Dismiss Appeal under 28 U.S.C. § 1291; granting permission to appeal pursuant to 28 U.S.C. § 1292(b); upon payment of a docket fee for the petition to the District

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES (Cont.)

Date *Description*

Court, the permissive appeal shall be given a new docket number and the two appeals (80-5471) shall be consolidated; and the order is without prejudice to the panel that hears the appeals reconsidering the Motion to Dismiss or the Petition for Leave to Appeal

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
DOCKET NOS. CA 80-5471 AND 80-5837

Date *Description*

July 15, 1981—Oral argument

Feb. 22, 1982—The opinion in *Northern Cheyenne Tribe v. Adsit*, 668 F.2d 1080 (9th Cir. 1982) was issued

Feb. 23, 1982—Opinions in *San Carlos Apache Tribe of Arizona v. State of Arizona*, No. 668 F.2d 1093, and *Navajo Nation v. United States*, 668 F.2d 1100 (1982) were issued

IN THE SUPREME COURT OF THE UNITED STATES
NO. 81-2147

Date *Description*

May 12, 1982—Petition for Writ of Certiorari

Oct. 4, 1982—Order granting Petitions for Writs of Certiorari in Nos. 81-2147 and 81-2188 consolidated

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CIV 79-276 PCT CAM

COMPLAINT FOR DECLARATORY RELIEF

NAVAJO NATION, a/k/a The Navajo Tribe of Indians,
Plaintiff,

v.

THE UNITED STATES OF AMERICA; THE STATE OF ARIZONA; M. L. HALL; M. J. WILTBANK; M. BROWN; J. S. BURKE; L. GREER; S. HULSEY; C. H. SHARP; M. BROWN; A. HALE; J. E. JARVIS; M. L. ODELL; J. P. REAGAN; J. H. WILTBANK; W. T. GREENWOOD; M. LUND; B. R. MURRY; E. WILKINS; B. BACA; I. ORTEGA; J. P. REAGAN; J. W. ETTER; H. J. METZLER; A. G. BECKER; J. GIDDINGS; R. O. RAYMOND; B. F. DREHER; R. R. SHOEMAKER; J. I. POWERS; J. B. MILLS; S. B. SLIGH; S. G. SWANSON; J. W. ROGERS; L. A. DECKER; J. P. HANSEN; D. W. CAMPBELL; B. BILL; A. C. DRYE; G. L. GIBSON; C. RICE; J. R. SELNA; B. C. NAEGLE; B. H. BABBITT; B. C. PRINCE; J. R. SELNA; R. T. WILSON; R. JENKS; B. H. BABBITT; A. R. PERRY; B. K. BIRD; H. G. ROUNDTREE; F. A. TURLEY; V. ENGBLOM; J. SLAUGHTER; B. JOLLEY; F. JOLLEY; I. E. COOK; I. WALLACE; K. M. QUINN; A. C. DRYE; J. R. SELNA; R. FLEMING; H. E. RICHARDS; T. B. GRANDIN; W. H. LARSON; W. D. ELLEDGE; R. Y. KITTREDGE; A. DRYE; A. C. RUEBUSH; A. H. DYSTERHEFT; H. HATCH; J. HACO; G. BACA; H. C. MILLER; J. A. FARNSWORTH; H. WHIPPLE; T. E. POLLOCK; H. M. LOCKETT; C. C. CHESHIRE; A. F. DENISON; F. ROGERS; J. A. KELLAM; J. H. CROSBY; E. G. DENTZER; J. M. SCHNEPF; J. E. DRIGGS; W. G. WINGFIELD; M. J. OHACO; C. TRAWEEK; J. A. THOMPSON; H. E. DEAN; E. E. SLADE; C. SLADE; R. B. HOOPER; L. SHERWOOD; D. F. RICHARD; J. A. BURK; R. G. PEARSON; J. R. METCALF; B. WHITING; R. S. BRINGHURST; J. E. JOY, JR.; B. L. TRAMMEL; F. W. M[illegible]NOUGH; W. CASTILLO; L. GARCIA; D. PACYAU; E. ORONA; R. TRAMMEL; J. D. TRAMMEL; R. B. TRAMMEL; J. GIVEN;

M. Rogers; F. Manier; D. P. Blum; E. Ellsworth; H. E. Sutter; W. L. Curry; M. Peddie; L. A. Andrews; E. H. Clark, Jr.; E. Thompson; P. Renner; M. Fitzgerald; L. R. Lee; R. A. Scott; H. D. Getzwiller; R. A. Weniger; C. Brown; L. B. Allen; M. Hansen; P. G. McCoy; H. Brown; C. R. Marble; A. Penrod; W. D. Rhoton; C. L. Rhoton; J. Heal; L. B. Brooks; L. E. Kershner; E. Waren; K. H. Carlson, Jr.; J. Swinney; T. M. Godwin; F. J. Fuller; L. H. Smith; V. O. Mayes; N. K. Tingleaf; R. E. Schreiber; P. Moya; F. R. Hiett; J. T. Allison; H. Brown; P. Longenbaugh; L. D. Coe; J. R. Clements; W. Bessett; R. Jackson; E. Wallace; N. J. Muellen; H. H. Mack; T. N. Johnson; J. E. Casey; W. Applegate; W. S. Stevenson; R. Wood; D. Reinhold; D. L. Hansen; R. W. Rhoton; R. F. Weete; J. E. Todd; B. B. Luce; E. P. Snoddy; E. A. Marshall; M. Pintek; J. S. Webb; B. B. Boyd; B. Boyd; G. Madison; L. H. Wingfield; V. Lesueur; C. Traweek; S. A. Wilson; V. L. Peterson; R. A. Thom; W. C. Hazel; R. D. Zellmer; I. H. Jackson; J. Denham; E. C. Burch; R. A. Pitman; L. L. Hansen; L. A. Ozment; F. A. Karr; C. Sypolt; C. L. White; J. J. Russo; R. Bush; R. F. Madison; R. Bush; E. D. Dowdle; J. T. Pearce; H. Pool; W. Allen; E. T. Oster; R. H. Burmeister; C. L. Spooner; J. Martin; G. A. Youtsey; C. T. Grieve; G. Sanders; D. F. Moore; R. Ruth; L. Szalkowski; B. G. Vallery; B. M. Lanphear; W. S. Gibbons; L. Mousseau; R. H. Henderson; R. W. Harris; R. E. Huffman; D. R. Layton; G. L. Tennyson; E. Clouse; W. J. Smith; J. L. Dwight; C. M. Poglajen; R. S. Dewey; M. D. Seaman; J. Cooper; R. L. Williams; J. Szabo; W. D. Kalt; R. H. Kessler; R. E. Garrett; L. C. Atwell; J. D. Yates; G. Adams; J. W. Larson; L. Stopp; D. I. Davis; T. W. Welch; S. G. Brewer; M. B. Owens; C. L. Sumerlin; R. A. Pitman; D. L. King; J. B. Garrett; G. J. Pitcher; D. C. Myre; C. V. Lips; V. K. Maguire; A. Carrasco; B. Woodworth; D. Scotten; E. M. Highland; S. Kuykendall; W. E. Mollett; F. J. Brady; E. H. Whiting; H. Butler; C. E. Young;

H. Butler; B. L. Meredith; D. E. Reinhold; D. J. Bawden; W. Stevens; M. H. Dickenson; K. Anderson; M. M. Lee; R. T. Merrill; G. H. Ashby; E. H. Close; J. W. Matus; A. F. Dennison; G. F. Bushman; B. Junker; L. C. Reynolds; D. Jackson; E. A. Spencer; J. C. Wilt; T. J. Whitmire; E. R. Brewer; K. F. Montague; R. D. Pfister; E. Deneke; R. L. Lane; R. F. Mollenhauer; J. Kadon; W. S. Gookin; G. J. Panarello; H. E. Kemp; G. C. Swarz; N. C. Long; B. C. Stewart; W. C. Langley; B. Bryant; C. J. Thomas; E. W. Duncan; J. T. Pearce; L. H. Reidhead; M. J. Fish; C. J. Cavey; M. V. Muder; W. H. Shafer; W. R. Bourdon; G. M. Crane; H. W. Craig; V. Smith; J. Throp; E. M. Huddleston; B. Miller; A. Nisly; J. Christensen; C. J. Ruedy; J. A. Eskew; W. L. Healdt; F. D. Sherman; R. A. Pinson; E. E. Schneider; C. C. Ghramm; C. H. Sharp; H. G. Udall; H. E. Slade; D. Ellsworth; S. D. Ellsworth; R. W. Hughes; H. E. Keyes; M. B. Stiles; J. D. Emerson; G. T. Young; W. D. King; C. W. Kurtz; E. H. whiting; V. M. Flake; B. Luke; B. Rojewski; R. W. Herr; F. A. Berg; R. H. Fagan; C. B. Hufford; F. P. Knight; J. D. Leverton; A. G. Wagner; J. A. Brown; P. E. Stephens; C. C. Naegle; L. E. Young; D. E. Leeds; M. M. Haws; W. Phlephs; F. W. Havens; J. E. Priggs; W. M. Greer; D. H. Driggs; C. F. Riggins; W. T. Hutcherson; E. Palmer; T. Roosevelt Counbsa; S. L. Sutherland; C. M. Johnson; L. L. Hansen; F. K. Shreve; A. R. Finch; G. E. Becker; W. M. Greer; R. A. Thom; D. N. Davis; A. L. Anderson; J. G. Avery; S. A. Kinard; H. W. Mather; E. J. Rawlins; G. E. Becker; G. T. McLaws; J. D. Leverton; P. G. Barreas; G. G. Provost; L. L. Hart; T. R. Thomas; G. Baca; E. L. Fitzhugh; K. E. Raney; J. C. Jeffers; L. W. Heaton; K. Anderson; G. F. Bushman; R. D. Ullery; R. L. Cook; L. A. Ozment; B. L. Perkins; M. M. Haws; A. P. Michelbach; A. J. Kirkham; G. McCullough; P. Slayton; M. L. Hall; B. A. Pierce; L. M. Manjeot; J. R. Potts; G. L. Spriestersback; W. G. Wingfield; G. Traweek; S. D. Ellsworth; F. A. Berg;

S. L. Sutherland; G. M. Johnson; A. R. Finch; D. N. Davis; J. G. Avery; S. A. Kinard; H. W. Mather; E. J. Rawlins; G. E. Becker; G. G. Provost; L. L. Hart; K. E. Raney; J. C. Jeffers; L. W. Heaton; A. C. Thompson; G. F. Bushman; L. A. Ozment; B. L. Perkins; M. M. Haws; A. J. Kirkham; P. Slayton; L. M. Manjeot; J. R. Potts; M. L. Hall; W. Chavez; E. Chavez; M. L. Hall; E. Gastineau; R. Lesueur; J. Erwin; R. J. Ross; L. Spelts; J. M. Godson; H. L. Rechtermann; W. Taylor; K. Marshall; L. C. Williams; B. Ballandby; A. B. McMillen; P. W. Allen; D. N. Ellison; E. L. White; G. M. Van Hoy; R. A. Anderson, Jr.; G. Ellsworth; R. Thomas; D. J. Devereaux; G. L. Northern; M. C. Johnson; J. F. Pritt; L. Ellsworth; E. L. White; H. Zane; E. L. White; F. H. Frost; R. D. Whiting; R. E. Hansen; J. Hatch; R. Hunt; W. G. McCray; F. Morton; T. Heal; G. H. Amos; F. Morton; P. G. McCray; C. H. Neff; A. V. Hancock; J. Wilson; G. Wilson; R. H. Hunt; R. H. Hatch; W. P. Leist Iko; L. McCleve; A. Frost; E. J. Brown; R. M. Neff; W. L. Neff; W. Reinhold; D. H. Paxton; R. L. Heath; J. Baird; B. J. Honor; C. J. Bounds; M. D. Holley; W. R. Schmidt; E. Sullivan; L. E. Childs; G. C. Huggins; J. Harrington; F. W. Mattoon; J. Cameron; S. G. Tiana; E. M. Deglane; E. Williams; A. C. Ruebush; C. M. Abbott; H. Canady; W. T. Carr; D. Miller; C. P. Candelaria; R. D. Gnodle; M. Carlton; R. G. Lambert; R. D. Miller; M. Mangum; L. Madris; R. J. Beck; R. Robinson; T. E. Reed; J. Heal; G. W. Egnor; P. Hiatt; M. G. Flake; A. J. Levine; G. I. Flake; J. K. Langston; D. Wilmore; W. P. White; L. D. Nelson; L. Matyas; P. P. Savage; T. Richardson; W. T. Washburn; D. Howard; H. Brady; F. J. Suglia; O. L. Mills; D. H. Bevers; B. E. Arney; B. Hatch; R. R. Brown; M. R. Smith; L. B. Decker; S. Heaton; L. W. Kriter; L. Guger; K. Whitt; S. G. Crosier; D. Rowley; L. L. Turley; K. Willis; L. Bryant; L. Carney; R. U. Ramsary; M. L. Lucas; R. C. Whittle; L. J. Woodside;

F. Shaw; C. W. Forsyth; H. Whipple; C. R. Tuley; R. Dennee; D. J. Devereaux; D. Dennee; J. T. Brimhall; E. R. Brimhall; M. Popovich; C. Foote; A. Peralta; C. Harris; G. Goodman; R. Squire; T. Heal; J. F. Hunt; L. Brimhall; H. Neff; C. R. Housley; J. Evans; J. Messinger; J. C. Messinger; G. F. Bauman; T. L. Dickey; D. H. Jordan; J. D. Stuart; J. Bagley, Jr.; R. Earl; R. Spires; J. W. Remela; B. K. Thomas; J. H. Webb; D. L. Coor; E. Gabaldon; M. T. Knudson; C. T. Osgood; E. E. Whitehouse; D. E. Whitehouse; J. Watson; B. Lablanc; R. D. Reidhead; H. Cromwell; C. E. Lane; E. J. Quinlan; M. Dariss; D. McIntyre; J. C. Roberts; R. S. Cheely; L. D. Lone; J. Brundage; M. Baker; H. F. Fero; H. Fite; A. Abbott; P. Hasbranch; J. Cottrell; N. T. Kennedy; G. K. Small; W. O. Hicken; P. S. Wolfe; R. J. Spino; J. Lopez; E. Vanner; A. Gates; R. J. Williams; H. A. Powers; C. D. Williams; L. Ratcliff; D. Brugman; J. Lehner; A. G. Pines; D. E. Whitehouse; A. Swanson; R. Cox, Sr.; R. Hammer; J. E. Herron; D. D. Gullick; R. L. Deal; E. J. Rawlins; E. Neal; O. Van Fleet; R. Pierce; F. Higgins; D. E. McKelvey; C. Richards; D. P. Desch; F. Steward; W. J. Evans; R. Scudder; S. Moore; J. Ogle; D. P. Ward; R. Fish; N. A. Monaco; M. G. Greer; O. C. Timmons; G. Read; C. D. Mann; C. T. Collins; R. Pontet; C. H. Alley; W. Ott; L. L. Dowd; K. W. McBride; T. H. Bia; B. Morita; M. Butler; J. Ray; D. Brown; G. F. Witters; G. Gray; J. A. Chiono; D. Dunawan; M. L. Norton; A. J. Bromwich; J. R. Hounshell; L. Blanton; G. Swinford; T. Lesperance; A. D. Halvensleben; G. T. Swinford; E. W. Musgrove; M. D. Mize; O. L. Andrews; W. M. Greer; K. D. Frezier; M. W. Heap; E. Hughes; L. T. Dodge; R. D. Cook; R. See; D. Mock; P. W. Wesson; M. Wilhelm; J. M. Broadbeux; R. G. Zawacky; E. P. Tobias, Sr.; M. Avery; M. Jarvis; S. Brier; R. A. Erwin; W. R. Clarence; C. R. Nichols, T. Glove; R. W. Adams; K. C. Whitehorn; T. E. Goff; B. H. Powell; R. Duffey; F. Lengenfelder;

W. C. Jackson; J. Flake; J. W. Brimhall; M. F. Caldwell; S. Lewis; C. W. Uttecht; G. Sherwood; W. R. Bourdon; C. Carter; M. C. Thomas; R. Johnson; G. N. Smith; O. Hansen; A. Dees; V. Ahill; D. B. Bowman; D. B. Littley; T. Miller; D. C. Sullivan; V. Ahill; C. Despain; T. Petty; J. Megum; W. G. Hall; G. F. Johnson; D. C. Sullivan; N. C. Kirkpatrick; G. L. Ellison; E. R. Soards; M. McGriff; D. C. Sullivan; E. Allender; J. A. Wollum; G. Owens; M. Churchill; A. Pradeau; W. A. Churchill; H. Schaffer; M. W. Barker; D. Gust; C. L. Saffell; F. T. Colter; T. Garcia; B. Lopez; F. T. Colter; B. D. Ortega; C. C. Ortega; J. H. Slade; J. S. Reagan; C. H. Sharp; H. Thompson; W. Hamblin; J. E. Nelson; J. Burgess; W. L. Robinson; C. H. Shart; M. Hale; F. Hofman; S. Hulsey; T. Phelps; W. L. Robinson; B. A. Thomason; E. W. Wiltbank; City of St. Johns; City of Holbrook; City of Winslow; City of Flagstaff; Town of Springerville; City of Show Low; Town of Taylor; Town of Snowflake.

M. Rogers; S. Klein; L. Rogers; F. K. Shelton; E. W. Pitt; J. Milici; W. L. Pensinger; J. Montierth; E. L. Youens; A. E. Leeds; D. B. Allen; R. C. Lairo; A. W. Gerhardt; W. A. Smith; G. C. Treadwell; D. R. Fuller; A. L. Schroeder; H. D. Jacobs; L. C. Haag; G. H. Stauffer; J. W. Tod; F. C. Tarlton; N. Matheny; J. F. Dye; C. I. Barnes; L. Barlow; R. R. Dunlap; J. Wiltbank; K. A. Hamm; C. Woolery; W. D. Moon; J. D. Williamson; A. Hoff; W. J. Schnaufer; J. D. Jamieson; R. L. Hoag; A. C. Thompson; J. A. Teilborg; F. C. Tarlton; L. D. Rohs; S. S. Rath; E. G. Dentzer; H. H. Haws; H. N. Bossett; D. W. Hobbs; D. Jones; K. E. Coffin; M. C. Dalby; C. L. Sloanaker; B. A. Pierce; N. Lewis; W. Tanner; R. Trammell; N. Faqundies; D. W. Richard; V. S. Hale; D. W. Richard; J. H. Vozza; B. R. Van Wormer; W. E. West; L. Henderson; M. Rogers; G. B. Granoin; A. Hunter; M. Vozza; R. E. Brockleman; N. Reidhead; L. Rogers; B. J. Rott; J. Cueto; J. G. Ramsey; N. Kejlett; E. H. Ross; L. J.

Carter; M. L. Lemieux; W. J. Grace; J. L. Gribble; J. P. Triber; J. J. Sossaman; N. F. Wolf; H. D. Smith; F. A. Smith; F. Schoefler; D. C. Faust; G. K. Sasser; H. G. Pratt; G. K. Colmer; B. Adair; J. Watkins; F. E. May; F. E. May; H. O. Ward; T. J. Norris; T. Carrillo; D. K. Toerpe; R. L. Bail; D. E. Lowell; G. A. Brown; W. E. Wells; B. B. Slade; W. C. Elmore; D. K. Yost; A. R. Stanton; D. J. Pulsipher; R. Barnes; C. E. Estes; J. W. Wilkins; J. H. Jones; F. W. Menough; H. P. Ashcroft; L. J. Bosen; L. J. Bosen; H. S. Geele; L. B. Austin; L. W. Peters; J. A. Peters; P. B. Lund; R. W. Haws; D. W. Richard; J. H. Jones; C. P. Pase; M. Thompson; H. W. Logan; C. Holliday; L. L. Murdock, Jr.; J. E. Looker; J. J. Heynaekamp; M. E. Mitscher; H. E. Slade; T. B. Slade; E. Ellsworth; H. E. Sutter; W. L. Curry; M. Peddie; L. A. Andrews; E. H. Clark, Jr.; P. Renner; E. Thompson; M. Fitzgerald; L. R. Lee; R. A. Scott; H. D. Getzwiller; R. A. Weniger; C. Brown; L. B. Allen; M. Hansen; P. G. McCray; H. Brown; C. R. Marble; A. Penrod; W. D. Rhoton; C. L. Rhoton; J. Heal; L. B. Brooks; L. E. Kershner; E. Waren; K. H. Carlson, Jr.; J. Swinney; T. M. Godwin; F. J. Fuller; L. H. Smith; V. O. Mayes; N. K. Tingleaf; R. E. Schreiber; P. Moya; L. R. Lee; F. R. Hiett; J. T. Allison; H. Brown; D. Longenbrauch; L. D. Coe; J. R. Clements; W. Bessett; W. J. Brown; R. Jackson; E. Wallace; N. J. Mullen; H. H. Mack; T. N. Johnson; J. E. Casey; W. Applegate; W. S. Stevenson; R. Wood; D. Reinhold; D. L. Hansen; R. W. Rhoton; R. F. Weete; J. E. Todd; B. B. Luce; E. P. Snoddy; E. A. Marshall; M. Pintek; J. S. Webb; B. B. Boyd; B. Boyd; G. Madison; E. E. Slade; C. Slade; R. B. Hooper; L. Sherwood; D. F. Richard; J. A. Burk; R. G. Pearson; J. R. Metcalf; B. Whiting; R. S. Bringhurst; J. E. Joy, Jr.; B. L. Trammel; F. W. Menough; W. Castillo; L. Garcia; D. Pacyau; E. Orona; R. Trammell; J. Given; M. Rogers; V. Lesueur; C. Traweek; S. A. Wilson; V. L. Peterson; R. A. Thom; W. C. Hazel; R. D. Zellmer; I. H.

JACKSON; J. DENHAM; E. C. BURCH; R. A. PITMAN; L. L. HANSEN; L. A. OZMENT; F. A. KARR; C. SYPOLT; C. L. WHITE; J. J. RUSSO; R. BUSH; R. F. MADISON; R. BUSH; E. D. DOWDLE; J. T. PEARCE; H. POOL; W. ALLEN; E. T. OSTER; R. H. BURMEISTER; P. WILKINS; M. W. WILKINS; J. ARCHUNDA; A. BURK; P. B. CANDELARIA; R. B. CANDELARIA; S. CANDELARIA; F. T. COLTER; C. HAMBLIN; M. HULSEY; J. E. LEE; A. M. ORTEGA; V. SANDOVAL; D. SHERWOOD; A. B. WAGNER; L. WILKINS; J. J. BACA; J. BURGESS; E. MARTINEZ; C. ORTEGA; A. CANDELARIA; T. GARCIA; L. J. SLADE; O. WILKINS; J. J. BACA; M. HULSEY; T. IRWIN; D. LOVE; D. SHERWOOD; J. W. SHERWOOD; A. BACA; A. CANDELARIA; S. CANDELARIA; C. A. COCHRAN; C. MARTINEZ; C. C. MIRAVAL; V. D. ORTEGA; L. ORTEGA; R. ORTIZ; J. E. PADILLA; R. PADILLA; D. SANDOVAL; M. HULSEY; A. MAXWELL; W. SWAIN; P. WILKINS; J. S. BURK; J. CANDELARIA; C. A. COCHRAN; C. MARTINEZ; J. W. SHERWOOD; H. G. KNOWLTON; E. NELSON; H. THOMPSON; L. BACA; M. CANDELARIA; M. GALLEGOS; C. H. SHARP; L. WILKINS; C. E. WILTBANK; J. BURGESS; W. LUND; H. THOMPSON; H. G. UDALL; J. K. UDALL; C. E. WILTBANK; M. GALLEGOS; C. C. ORTEGA; J. H. PEARCE; C. SANDOVAL; J. M. SANDOVAL; J. P. SANDOVAL; J. BURGESS; H. BUTLER; J. S. REAGAN; H. BUTLER; INDIVIDUAL JOHN DOES 1-50,000; INDIVIDUAL JANE DOES 1-50,000; CORPORATIONS 1-20,000; PARTNERSHIPS 1-20,000 and ASSOCIATIONS 1-20,000,

Defendants.

I. PRELIMINARY STATEMENT

1. This is a general stream adjudication seeking to adjudicate all rights in and to the surface and ground waters of the Little Colorado River Basin in the States of Arizona and New Mexico.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to the Judicial Code, 28 U.S.C. 1331 and 1362; and the Declaratory Judgment Act, 28 U.S.C. 2210-2202.

3. The amount in controversy, exclusive of interest and costs, exceeds $10,000.

4. For purposes of venue, the Little Colorado River Basin is located in Navajo, Apache and Coconino Counties of Arizona.

III. PARTIES

5. The NAVAJO NATION, a/k/a The Navajo Tribe of Indians, is an Indian Tribe with a governing body duly recognized by the Secretary of the Interior.

6. THE UNITED STATES OF AMERICA appears in this action both in its sovereign capacity as a party claiming ownership and/or use rights to water in the Little Colorado River Basin and as trustee for the Hopi, Zuni, White Mountain Apache Indian Tribes, and Indian allottees.

7. THE STATE OF ARIZONA appears in this action both in its sovereign capacity as a party claiming ownership and/or use rights to water in the Little Colorado River Basin and as *parens patriae* for all parties within the State of Arizona with claims to water rights in the Little Colorado River Basin arising under Arizona State law.

8. The remaining named Defendants are corporations, municipalities, towns, persons and entities using, seeking to make use of, claiming ownership of, claiming an interest in, or otherwise claiming water rights to the Little Colorado River Basin.

9. The unnamed Defendants, Individuals John Does 1-50,000, Individuals Jane Does 1-50,000, Corporations 1-20,000, Partnerships 1-20,000, and Associations 1-20,000, are various other persons, corporations, partnerships, entities, cities, municipalities and towns using, seeking to make use of, claiming ownership of, claiming an interest in, or

otherwise claiming water rights to the Little Colorado River Basin. At the present time, the names of these Defendants are not known to Plaintiff but will be supplied as they become available, and Plaintiff reserves the right to amend its Complaint as may be appropriate in the circumstances for that purpose. All Defendants are either residents of the State of Arizona, own or have a lesser interest in land in the State of Arizona, or are corporations, partnerships, or municipalities or towns, organized under the laws of the State of Arizona or doing business within the State of Arizona.

IV. FACTS

10. The Little Colorado River Basin drains an area of approximately 26,000 square miles in east central Arizona and west central New Mexico. This area of drainage includes approximately 11,000 square miles of the southern portion of the Navajo Reservation or approximately forty percent (40%) of the total area.

11. The Little Colorado River Basin is depicted in Exhibit "A" attached hereto and incorporated herein by reference.

12. The Little Colorado River is a tributary of the Colorado River and flows in a northwesterly direction.

13. Major tributaries of the Little Colorado River include, *inter alia*, Moenkopi Wash, Dinnebito Wash, Corn Creek Wash, Laroux Wash, Puerco River, Zuni River, Carrizo Wash, Silver Creek, Salt Creek and Canyon Diablo Creek.

14. Other sources of water feeding the Little Colorado River include, *inter alia*, Polacca Wash, Black Creek and Showlow Creek.

15. Upon information and belief, defendants UNITED STATES OF AMERICA and STATE OF ARIZONA, both in their sovereign (proprietary) capacities and in their capacities as trustee and *parens* patriae, respectively, claim an interest, as yet undetermined, in the surface and ground waters of the Little Colorado River Basin.

16. Upon information and belief, remaining defendants, both named and unnamed, claim an interest, as yet undetermined, in the surface and ground waters of the Little Colorado River Basin.

17. Unless and until all rights in and to the surface and ground waters of the Little Colorado River Basin in Arizona are judicially determined by this Court, plaintiff is unable to commence and complete projects using said waters for the benefit of the people of the NAVAJO NATION and designed to make the NAVAJO NATION a viable homeland for the Navajo people.

18. The exact extent of Navajo lands in the Little Colorado River Basin in presently in litigation in the United States District Court at Phoenix, in action number CIV 74-842-PHX-WPC, *Sekaquaptewa v. MacDonald*, as authorized by Section 8 of the Navajo-Hopi Settlement Act, 88 Stat. 1712, 25 U.S.C. 640d-7.

19. The NAVAJO NATION has reserved, ownership and use rights in the ground and surface waters of the Little Colorado River Basin in Arizona for the following purposes:

(a) irrigated agriculture;
(b) domestic and municipal use;
(c) industrial use;
(d) silvaculture;
(e) stream flow maintenance;
(f) religious use;
(g) recreational use;
(h) watershed protection;
(i) salinity control;
(j) fish and wildlife;

(k) other uses to be proved at trial.

V. CLAIMS FOR RELIEF

Count One

20. Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 19, and makes them a part hereof.

21. The Little Colorado River Basin constitutes part of the traditional homeland of the Navajo people and the NAVAJO NATION.

22. The lands presently occupied by the NAVAJO NATION in the Little Colorado River Basin constitute part of the traditional homeland of the Navajo people. The NAVAJO NATION has, since time immemorial, appropriated and reserved for its use and benefit, ownership and use rights to the surface and ground waters of the Basin in an amount to be proved at the trial of this cause for the purposes set forth in paragraph 19 of this Complaint.

Count Two

23. Plaintiff hereby incorporates by reference the allegations set forth in paragraphs 1 through 19, and makes them a part hereof.

24. Navajo rights to land in the Little Colorado River Basin have been recognized in the Treaty of 1868 between the Navajo Tribe and the United States, 15 Stat. 667, and various statutes and Executive Orders culminating in the Navajo Boundary Act of 1934, 48 Stat. 960, and the jurisdictional statutes authorizing litigation to determine rights and interests in the 1882 Executive Order Reservation, 72 Stat. 403 (1958) and 88 Stat. 1712, 25 U.S.C. 640d.

25. When the UNITED STATES set aside lands in the Little Colorado River Basin for the NAVAJO NATION by Treaty, statute, Executive Order and purchase, it reserved ownership and use rights for the NAVAJO NATION to the surface and ground waters of the Basin in an amount to be proved at trial.

Count Three

26. Plaintiff hereby incorporates by reference the allegations set forth in paragraphs 1 through 19 and makes them a part hereof.

27. The NAVAJO NATION has also acquired land in the Little Colorado River Basin by purchase and gift as authorized by the 1934 Navajo Boundary Act, 48 Stat. 960, the Navajo-Hopi Rehabilitation Act, 64 Stat. 44, 25 U.S.C. 635, and by the inherent sovereignty of the NAVAJO NATION.

28. When the NAVAJO NATION acquired lands, by gift and purchase, in the Little Colorado River Basin, it acquired reserved, ownership and use rights to the surface and ground waters of the Basin in an amount to be proved at trial.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff NAVAJO NATION demands relief as follows:

1. That this Court direct defendants UNITED STATES OF AMERICA and STATE OF ARIZONA to set forth their specific water rights claims in and to the surface and ground waters of the Little Colorado River Basin, both in their sovereign (proprietary) capacities and in their capacities as trustee and *parens patriae* within a reasonable time, not to exceed nine (9) months from the date of service of a copy of this Complaint.

2. That this Court direct remaining defendants to set forth their specific water rights claims in and to the surface and ground waters of the Little Colorado River Basin within a reasonable time, not to exceed nine (9) months from the date of service of a copy of this Complaint.

3. That this Court set a hearing to determine whether, pursuant to Rule 53 of the Federal Rules of Civil Procedure, a special master should be appointed.

4. That a judgment be entered setting forth the respective rights among the parties hereto to the ground and surface waters of the Little Colorado River Basin in Arizona and setting forth the quantitative rights of the parties, the purposes for which the water so adjudicated may be used, and the relative priority dates of the rights so adjudicated.

5. Together with such other relief as to the Court may appear just and proper in the circumstances.

DATED: April 17, 1979

VLASSIS, RUZOW & CROWDER
1545 West Thomas Road
Phoenix, Arizona 85015

By /s/ G. P. VLASSIS
George P. Vlassis
Lawrence A. Ruzow
Katherine Ott
Belinda K. Barrington
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

THE NAVAJO NATION, a/k/a THE NAVAJO TRIBE OF INDIANS, *Plaintiff,* -against- THE UNITED STATES OF AMERICA; THE STATE OF ARIZONA; PHELPS-DODGE CORPORATION; M.L. HALL; M.J. WILTBANK; M. BROWN; J. S. BURKE; and L. GREER sued in their own right and on behalf of all persons similarly situated, *Defendants,*	CIV. 79-276-PCT-VAC AMENDED COMPLAINT

The Nature of the Action

1. This is an action for a declaratory judgment to establish that plaintiff, the Navajo Nation, possesses ownership and use rights to the surface and ground waters of the Little Colorado River Basin in an amount sufficient for the reasonable needs of the people of the Navajo Nation; and that the priority date of those rights is time immemorial, or, at the latest, the various dates in 1868 and thereafter upon which lands in the Little Colorado River Basin were set aside by the United States for the Navajo Nation.

2. This action is limited to the issue of the time immemorial and reserved rights of the Navajo Nation. Plaintiff does not seek the resolution of any issue relating to the dates on which and the amounts in which water was appropriated, and does not seek the institution of any proceedings for the administration of water rights.

Jurisdiction and Venue

3. This Court has jurisdiction of this action pursuant to the Judicial Code, 28 U.S.C. §§ 1331 and 1362; the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; and the McCarran Water Rights Suit Act, 43 U.S.C. § 666. The matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs.

4. Venue is laid in this district pursuant to 28 U.S.C. § 1391(b), (c) and (e). The cause of action arose in the Navajo, Apache, and Coconino Counties of Arizona, in the Prescott Division of this Court, where the Little Colorado River Basin is located.

The Parties

5. The Navajo Nation, a/k/a the Navajo Tribe of Indians, is an Indian tribe with a governing body duly recognized by the Secretary of the Interior.

6. Defendants are a class consisting of all persons or entities claiming ownership and/or use rights to water in the Little Colorado River Basin. Eight members of the class have been named as representative defendants, and are sued in their individual capacities, and on behalf of all persons similarly situated.

7. Defendant the United States of America claims ownership and/or use rights to water in the Little Colorado River Basin both in its sovereign capacity and as trustee for the Hopi, Zuni and White Mountain Apache Indian Tribes, and for Indian allottees.

8. Defendant the State of Arizona claims ownership and/or use rights to water in the Little Colorado River Basin in its sovereign capacity. It is also *parens patriae* for all persons within the State of Arizona with claims to water rights in the Little Colorado River Basin arising under Arizona state law.

9. Defendant Phelps-Dodge Corporation ("Phelps-Dodge") is a New York corporation with its principal place of business at 300 Park Avenue, New York, New York. On information and belief, it is licensed to do business, and is doing business, in the State of Arizona. It claims ownership and/or use rights to water in the Little Colorado River Basin.

10. Upon information and belief, defendants M. L. Hall, M. J. Wiltbank, M. Brown, J. S. Burke and L. Greer are individual residents of the State of Arizona who claim ownership and/or use rights to water in the Little Colorado River Basin.

Class Action Allegations

11. The class of all persons claiming ownership and/or use rights to water in the Little Colorado River Basin is so numerous that the joinder of all members is impracticable. Upon information and belief, more than 10,000 persons or entities are members of the class.

12. The questions of law and fact raised in this action, as to the Navajo Nation's time immemorial and reserved rights to water in the Little Colorado River Basin, are common to the class.

13. The defenses of the named defendants are typical of the defenses of the class. Because of the nature of plaintiff's claim, it is reasonable to expect that all members of the class will rely on the same purported defenses.

14. Upon information and belief, the named defendants will fairly and adequately protect the interests of the class. In particular, defendant State of Arizona, as *parens patriae* of the citizens of Arizona, has ample resources and incentive to attempt to defeat plaintiff's claim; and Phelps-Dodge is a corporation of substantial size and resources which has a large economic stake in defeating plaintiff's claim.

15. The prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for plaintiff, and would also create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, and would substantially impair or impede their ability to proctect their interests.

16. Plaintiff, the party opposing the defendant class, claims its water rights on grounds generally applicable to the class, and final declaratory relief is therefore appropriate with respect to the class as a whole.

17. The questions of law and fact common to the members of the class predominate over any questions of law or fact affecting only individual members. While the priority dates and quantities of water claimed by the individual class members will differ, these claims of class members are not at issue in this action. This action seeks only to establish that plaintiff has water rights dating from time immemorial, or at latest from the dates upon which land was set aside by the United States for the use of the Navajo Nation. Few, if any, class members claim priority dates earlier than those claimed by plaintiff; those few claims to earlier priority dates are not at issue in this action, and can be adjudicated in other proceedings.

18. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Upon information and belief, no class members has any legitimate interest in defending a separate action; any member who wishes to make his own defense may appear in this action. Plaintiff has not previously commenced any litigation against any other member of the class raising the issue which is raised in this action. It is desirable to concentrate the litigation of this claim in this forum. Any difficulties likely to be encountered in the management of a

class action will be far less serious than the difficulties that would be encountered in the management of an action against thousands of named defendants, or in thousands of actions against the individual members of the class.

First Claim for Relief

19. The Little Colorado River Basin is an area of approximately 26,000 square miles in east central Arizona and west central New Mexico. It includes approximately 11,000 square miles of the southern portion of the area set aside by the United States for the Navajo Nation ("the Navajo Reservation"). The Little Colorado River Basin and the Navajo Reservation are depicted on the map attached as Exhibit A.

20. the Navajo Reservation was established on part of the traditional homeland of the Navajo people and the Navajo Nation, which included all of the Little Colorado River Basin.

21. The Navajo Nation has, since time immemorial, been entitled to ownership and use rights to the surface and ground waters of the Little Colorado River Basin in an amount sufficient for the reasonable needs of the people of the Navajo Nation.

Second Claim for Relief

22. Plaintiff repeats the allegations of paragraphs 1 through 20 above.

23. Navajo rights to land in the Little Colorado River Basin were recognized in the Treaty of 1868 between the Navajo Tribe and the United States, 15 Stat. 667, in various statutes and executive orders culminating in the Navajo Boundary Act of 1934, 48 Stat. 960, and in the jurisdictional statutes authorizing litigation to determine rights and interests in the 1882 Executive Order Reservation, 72 Stat. 403 (1958) and 88 Stat. 1712, 25 U.S.C. § 640(d).

24. When the United States set aside lands in the Little Colorado River Basin for the Navajo Nation by treaty, statute, executive order, or otherwise, it reserved ownership and use rights for the Navajo Nation to the surface and ground waters of the Little Colorado River Basin in an amount sufficient for the reasonable needs of the people of the Navajo Nation.

25. The priority dates for the reserved rights referred to in the preceding paragraph are the dates when the rights were created by treaty, statute, executive order or otherwise, by the United States.

WHEREFORE, plaintiff demands relief as follows:

1. Declaring that plaintiff is entitled to ownership and use rights to the surface and ground waters of the Little Colorado River Basin in an amount sufficient for the reasonable needs of the people of the Navajo Nation, with a priority date of time immemorial; or

2. In the alternative, declaring that plaintiff is entitled to ownership and use rights to the surface and ground waters of the Little Colorado River Basin in an amount sufficient for the reasonable needs of the people of the Navajo Nation, the priority dates being those dates upon which land was set aside by the United States for the Navajo Nation; and

3. Granting to plaintiff such other and further relief as is just.

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
345 Park Avenue
New York, New York 10022

and

VLASSIS, RUZOW & CROWDER
1545 W. Thomas Road
Phoenix, Arizona 85015

By /s/ GEORGE P. VLASSIS
George P. Vlassis
Lawrence A. Ruzow
Katherine Ott

Dated: July 16, 1979

CERTIFICATE OF SERVICE

Copy of the foregoing Amended Complaint mailed this 16th day of July, 1979, to:

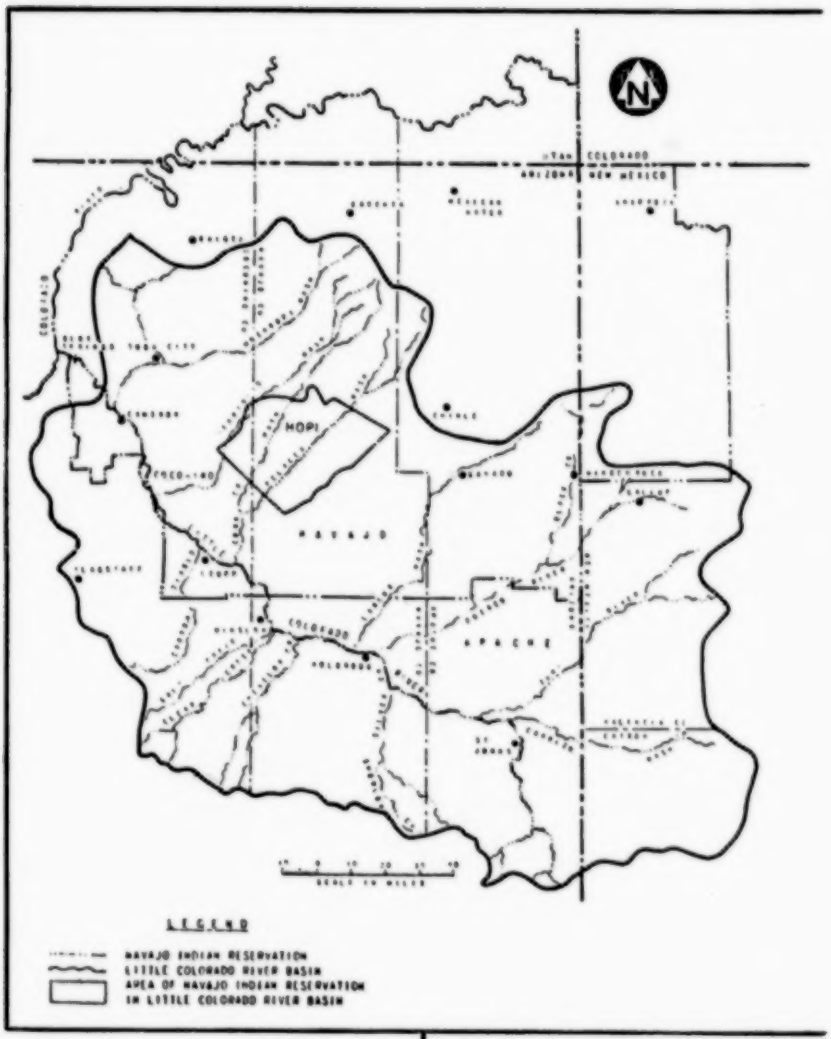
Russell A. Kolsrud
Assistant Attorney General
Office of Robert K. Corbin
Attorney General
200 State Capitol
Phoenix, Arizona 85007

Michael Hawkins
Assistant United States Attorney
5000 Federal Building
Phoenix, Arizona 85025

Griffin B. Bell
United States Attorney General
Department of Justice
Constitution Avenue, 9th and 10th Sts., N.W.
Washington, D.C. 20530

By: /s/ GEORGE P. VLASSIS

EXHIBIT "A"



LITTLE COLORADO RIVER BASIN
LOCATION MAP

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLORADO
Civil No. 4497
Complaint
UNITED STATES OF AMERICA, *Plaintiff,*

v.

Akin, Mary; Albright, Louis N.; Alexander, Clara; Allen, Whetsel; Ames, Margaret; Anderson, Luther; Anderson, Ralph; Anesi, Edith; Anesi, Louisa; Animas Consolidated Ditch Company; Animas Valley Ditch Company; Anixter, William R.; Annala, Roy L.; Archuleta, L. M.; Arizona Columbine Ranch, Inc.; Armstrong, Charles H.; Arny, Julian; Askins, H. Harry & Lillian Andrews; Aspen Springs Development Company; Aspen Trails Development Corporation; Aten, William & Ladeane; Atkinson, D. L.; Audas, W. L.;

Babcock, Kenneth; Bader, Clay; Baird, Brant; Baker, Mary; Baker, Mrs. Jack; Ball, W. P.; Bankston, Neil M.; Balligu, Robert; Barclay, George & Veva E.; Barker, Earl, Jr.; Barker, Jenta J.; Barnes, Lloyd; Barnes, Pearl P.; Barnes, R. H.; Barnes, Holly G.; Pearl Barnes & Sons; Barr, Robert & Roberta; Barrett, Castle; Barrow, Hence; Bartel, Roland; Bauer, William; Beaty, John & Abenecio Munoz; Becay, Frank J. & Adeline J.; Bedford, Marie; Beebe, Gary; Beggrow, David R.; Beggrow, Dennis K.; Beggrow, William R.; Beighley, Harold V.; Belmear, Stanley T. & Elizabeth L.; Bement, Robert E. & Thelma F.; Bennet, Mabel; Benton, Jay M. & Alice H.; Berg. J. T.; Berryhill, Duane; Bettis, Willis; Bevten, Alta M.; Big Stick Ditch Company; Bigbee Brothers Cattle Company; Bingham, Elbert J. & Ruth A.; Bingham, Percy; Birdsill, Dottie J.; Bishop Brothers; Bixler, Charles A.; Blackmer, Fred C. & Helen M.; Blackmer, Pat; Blair, Frank; Blanding, Charles F.; Bloomfield, J. Vernon; Boclochoe, L. D.; Bodo, Michael; Bond, Tarlton; Bonds, R. V., Jr.; Bonds, Russell; Bowman, Willard O.; Bradford, Bryon; Bradshaw, Dean; Bradshaw, H.D.; Bramwell, Carl; Bramwell, Edwin; Brewer, Lester C.; Bridgewater, James & Cecilia; Brown, Antonio J.; Brown, George; Brown, Hazel;

Brown, J. C.; Brown, Joe; Brown, Marvin C.; Brown, Naomi Carter; Brown, Raymond T.; Brown, Roy; Brown, Warren J.; Brixey, J. A.; Bryan, F. W.; Burkhard, Merton, Burkhard, Morton; Burnham, Clinton; Bernett Construction Company; Butler, Byron C.; Butler, Leona Easter; Bynum, James;

Caddy, Glenn; Calco Mining; Calhoun, Clarence; Calloway, Sam; Calvin, Ross, Jr.; Campbell, Charlie; Candelaria, Ed; Candelaria, Isiah; Candelaria, Sam; Carleno, Donald L.; Carmody, H. C., Inc.; Carpenter, G. R.; Carpenter, N. E.; Carver, John; Catchpole, Harvey; Caulk, Garland; Chapman, Vincent P. & Linda J.; Charles, Carroll; Chavez, Adolph; Chavez, Ben; Chavez, Dan; Chromo Mercantile; Chromo Ranches, Inc.; City of Dove Creek; City of Durango; City of Rico; Cladwell, E. H.; Clark, Emilie; Clark, Henry B.; Clark, Rosamond B.; Claude Decker Subdivision; Clever, Don W. & Viola G.; Cline, Fred; Cloman, James; Cogburn, Blanton & Lucille E.; Cogburn, D. F.; Cogburn, Foy; Colbert, Tom; Colescott, Ralph R. & Llyn P.; Collier, Burlson; Colorado Game & Fish Commission; Colorado Land Management; Comisky, Doris D.; Comyford, Carl F.; Connelley, Ruben; Conrad, Walter; Constant, Jack A.; Cook, Joseph D., Jr.; Cook, Willie M.; Cooper, Charlie B. & Bernice F.; Cooper, Howard; Cooper, Ted; Coppinger, R. B.; Corbett, Allison; Cordalis, James T.; Cordova, Marion; Cortex Cattle Company; Cotten, John E.; Cotten, Patrick C.; Couch, Derrel L. & Rosemary; Cox, Ira; Cox, Lee; Craig, Grace; Craig, Kenneth; Crawford, Allen; Crawford, Gwendolyn B.; Cresto, T. A.; Crow, A. M.; Crowley, Bernice; Crowley, Irwin R.; Crowley, Olen; Cugini, Duane; Currier, A.B.;

D. & R. G. W. Railroad; Dalabetta, Angelo; Dale, Marvin; Dale, W. W.; Daniels, Clyde L.; Dannels, Edith A.; Daniel, Eldrige B. a/k/a E. B. Daniel & Lenoria Daniel; Daulton Sealey Cattle Co.; Daulton, Glenn; Daulton, Mrs. Ted; David, George; Davies, Charles; Davis, Clarence; Davis, Phillip; Decker, Bill; Decker, Claude A.; Deering, Claude; Delzell,

Robert W.; Denny, A. Wayne; Dickens, M. R.; District 30; Dittmar, Joseph E.; Dixilyn Corporation; Dobbins, Arthur; Dobbins, Hall; Dobbins, Jacqueline; Doerfer, Lloyd; Dolese, Mrs. Roger; Dorsett, Alton; Dove Creek, City of; Dowler, Alton D.; Doyle Gwynevere Marrs & Nell; Dugger, Wayne; Dunagan, Illamae; Duncan, Raymond T.; Dunlap, Wesley V. & Elizabeth H.; Dunnagan, Ila Mae; Dunsworth Cabin Sties, Durango Ski Corporation;

Eaklor, Harry & Winona C.; Ealum, Ury L. & Betty Jo; Easter, L. B. & Cheryl H.; Eaton International Corporation; Echo Ditch Company; Eddie, Clifford; Eddy, J. T.; Edmonson, Elizabeth; Edwards, Roger W. & Rose A.; Eggleston, T. W.; Ellis, Darrell; Ellis, Vernon; El Paso Gas Company; Elkins, Mark; Englehart, Charles B.; Englehart, Cordia; Engler, Harry; English, Leroy; Eoff, W. S. & Zoe L.; Erwin, paul R.; Evans, Emmit B.; Evarts, Kathryn Russell; Everett, Larry; Everett, Leroy;

Fair Field Farms, Inc.; Farrow, Wayne; Fassett, Bruce; Fassett, Delwin; Faverino, Mike; Feazel, Betty; Feazel, Elizabeth T.; Fellers, C. C. & Dorothea; Fisher, Adrian G. & James C.; Fitzhugh, Alvin C.; Fletcher, A. R.; Florida Canal Enlargement Company; Florida River Estates; Florida Water Conservative District; Ford, Thomas R.; Ford, Tom; Folsom, Wade C. & Pearl G.; Forest, Melvin; Formwalt, Hood; Frahn, Alfred; Fraley, B. J.; Frame, Ross; Frazier, Bob; Frazier, J. W.; Fredricks, Arnold; Friend, C. H.; Fritz, Walter G. & Bertha Mae; Frizell, Frank; Frizell, T. J.; Fuches, Harley F.;

Gafford, Douglas D.; Gale, Josephine; Gallegos, Helen; Gallegos, Jose G.; Gallegos, Tom & Margarite Lopez; Galloway, Elynor Sue & Daisy; Gardner, J. T.; Gardner, Jewell; Gardner, Jewell L.; Gardner, Olivia; Gardner, Robert H.; Garnand, Dave; Garrett, Dan; Garrison, Violet; Gawith, Ann; Gawthrop, Lillian; Gawthrop, Rapp; Gibbs, Warren; Gibson, Eldon; Gibson, Irene; Gilliland, Tom; Gilmore, George; Gilmore, Ward; Girard, Louis E.; Girardin, Louis; Gladden, Allie J.; Godfrey, Delmar; Gomez, Chris; Good-

man, David; Grace, Mary; Gray Frank; Green, Houston; Green, Johnie; Greenlee, Howard; Greer, Harry H.; Greer, Lila; Gregg, J. Floyd & Bettie L.; Grevey-Lieberman Inv. Co.; Griffith, Gardner & Stevens; Grimes, B. H. a/k/a Grimes, Bill H.; Grives, J. L.; Grubbs, H.; Grutzmacher, Charles C.; Gurley, C. E.; Guy, Charles;

Haas, Al; Hall, Foster; Halls, Harry; Halverson, Harold; Halverson, Leslie; Hamblin, Kenneth M.; Hamilton, W. E.; Hampton, Edward B. & Rose E.; Hand, Robert; Hanning, Ollie; Happy Scenes Water System; Hare, Alex; Harmon, Fred; Harris, C. C.; Harris, David A.; Harris, Don; Harris, Donald; Haun, M. D. & Maggie Lee; Hawkins, Herbert; Hayes, John T. & Belle M.; Haynie, Ralph; Haynie, Delph V.; Hays, John; Hays, U. J.; Henderson, R. J.; Henes, Walter; Henshaw, Wesley; Herschy; Hess, Lloyd; Hesselgrave, Robert M.; Hetherton, Jack; Hicks, James; Higgins, Allen Denton; Highfill, Robert W.; Hillen, Mollie A. & Roger H.; Hillyer, Oswen N. & Violet M.; Hinger, Charles C.; Hoff, Emo Gene; Holaday, Carl D.; Holgate, Merle; Holton, Walter B.; Holzraf, Conrad; Hood, Louis; Hopper, Hazel M.; Hott, Daily; Hott, R. D.; Hotter, Joe; Hughes, Beverly; Hughes, Bill; Hughes Brothers; Hughes, Chas. J.; Hughes, Jack (Estate); Hughes, John; Huntington, C. W.; Huntington, Lawrence; Hurt, Oliver; Hutchinson, E. L.; Hyde, Bert; Hyde, Leola; Hyde, Wade H.; Hyder & Hyder Ranch;

Isgar, Arthur; Ismay, Eugene; Ismay, John;

Jackson, Charles E.; Jackson, William F.; James, David; Jaques, Manuel M.; Jarvis, J. W. (Estate); Jarvis, Marion H.; Jarvis Estate; Jasper, Davden; Jeckel, H. M.; Jeffrey, Dorothy H. & Stephen J.; Jenkins, Marion E. & Louise M.; Johnson, Charles; Johnson, Curtis; Johnson, Cy; Johnson, Eugene; Johnson, Robert A.; Jones, Chris H. & Effie; Jones, James; Jones, Robert F. & Dorothy May; Joyner, Jerry L. & Helen I.; Jutten, John; Jutten, W. W.;

Kahn, William; Keahey, P. F.; Keane, Johnny; Keeler, Rex; Keen, William L. S. & Mildred C.; Kelly, Pauline; Kenagy, Paul E.; Kern Acre Real Estate; Kerr, John; Kikel, Joe; King, Arthur; Kine, Ed; King, John; Kingery, C. A.; Kleckner, Carl; Knowlton, Henry; Knackles, Glen; Knutson, D.C.; Koenig, Carl; Koenig, Ruby K.; Kolz, Alvin; Koshak, Stanley; Kroeger, Jack; Kroulik, Charles; Kruger, John; Kruger, N. J.; Kuenzler, William; Kugle, Kris F.; Kuhlman, Gordon;

Lake, Lawrence; Lancaster, Perry; Lapp, Conrad; Las Tres Piedras, Inc.; Laws, Henry & Leatha; Lechner, Erwin; Lechner, Ervin; Lechner, Irwin A.; Lechner, John; Lechner, Joseph A.; Lee, Brice F.; Leigh, Royal Archie; Leighton, Robert; Leister, D. B.; Lemon, Charles; Lenard, Joseph; Leonard, Cathryine R.; Leonard, M. H.; Le Platt, H. J.; Lewis, Loyd; Lichliter, Roy; Light, Arthur E.; Lincoln, Francis; Linger, Earl O.; Linsey, Lester; Lippert, Robert; Little Navajo Diversion Canal Co.; Little, Scott, Mrs.; Lohr, Edward G.; Long, J. Kenneth & Elanor J.; Longenbauch, Harry; Longengaugh, H. H.; Longengauch, Robert L.; Lopez, Margarite; Los Pinos Irrigation Ditch Company; Lucero, Joe; Luchini Ranch; Luchini, Louis; Ludwig, Frank, Jr.; Lukas, Robert L.; Lunt, Wayne J.; Lynn. William P.;

M. V. I. D.; Macht, H. Ray; Mackey, Stewart B.; Macy, Tilton; Majors, Donald K.; Mancos Water Cons. Dist.; Marach, L. H. & May E.; Marcact Investment; March, Willard; Martinez, Eugene; Martinez, Fred J.; Martinez, Jesus; Martinez, Jesus M.; Martinez, Manuel E. & Lydia; Martinez, Mel; Martinez, Reynel; Martinez, Victoria G.; Masanz, Paul J. & Jean L.; Masco Brothers; Masco, Charles; Masco, John; Masanz, Paul; Mason, Isabel; Mayfield, James F.; McAfee, Bruce; McCaleb, Joe; McCabe, Vance; McCall, Charlie; McCall, Charles R. & Hazel; McCarthy, Daniel; McCaw, Robert; McCaw, Leroy; McClain; McClure, Don; McConaty, Beverly Brown Hughes; McCormick, Robert; McCoy, Clarence; McEwen, Leucian; McEwen, Noel & Mary J.; McGilvray, M. W.; McInnes, Lewis & Vera M.; McIntyre, W. Fred; McNamara, John; Mekar, Junnie L.; Melvin, C.

L.; Menaldino, Victor; Merger Mining & Milling; Mesa Verde Company; Messinger, Wester & Vester; Meyer, Otto & Alma; Michels, Wilford; Mignerey, Lester L., Sr.; Mignerey, Lester L., Jr.; Mignerey, Arthur C.; Millard, Arthur; Millard, Mary Jane; Miller Brothers; Miller, J. T.; Miller, Jesse; Miller, John; Milo, Hanstedt; Minor, Harmon; Minor, H. E.; Minor, H. E., Jr.; Miser, Martin; Mod Dairy, Inc.; Mohar, Jennie Lee; Montezuma Plywood Co.; Montezuma Valley Irrigation Company; Montezuma Water Company; Montoya, Louis; Montoya, Modesto; Montroy, Leon; Morgan, Jean; Morris, Vincent; Morrison Consolidated Ditch Co.; Munoz, Abenecio; Munoz, Daniel; Munyon, William L. & Jona A.; Mustian, Dorthea; Myers, Ron;

Nanna, Sylvester M.; Necchi, John; Nelson, Charles; New Mexico Game & Fish; Newbold, Jack; Newbold, Jack G.; Newton, Mrs. Horace; Nickles Brothers; Nielson, Dick; Neilson, G. L.; Noland, Owen & Gertrude; Nord, Warren E. & Myrtle S.; Norton, James;

O'Brien, Eva; O'Brien, Robert W.; O'Brien, Rosemary; Oliver, Troy; Ortiz, Bill; Ortiz, Modesto; Oseola Metals Corporation; Osterhoudt, Walter & Gretchen; Overstay, Robert; Owens, Emmit & Lillie May; Oxley, Grant;

Palmer, S. B.; Pargin Brothers; Parks, Grace; Parmley, D. E.; Parmley, Harry; Patten, James S. & Margaret E.; Patten, Meredith Lynn; Patterson, Ross D. & Betty J.; Paulek, Debs; Paulek, Grant; Paulek, Margurite; Paulek, V. A.; Paxton, George; Pecis, Fred; Peck, Jack D.; Penn, William; Penny, Norris R.; Perez, Gloria; Perkins, Calvin J.; Periman, R. T.; Perry Barnes & Sons; Peterson, Jack; Petry, Albert; Phelps, J. W., Jr.; Piccoli, Tony; Picker, George B. & Maxine S.; Pierce, Arthur; Pinckert, Robert L.; Pine River Cattle Co.; Pine River-Bayfield Ditch Company; Pine River Irrigation District; Pinckert, Robert; Pittsburg and Midway Coal Mining Company; Plumb, Fred B.; Poma,

Victor A. & Ethel I.; Porter, C. C.; Porter, Verna Dell; Potter, Shelly; Price, Hubert; Price, Thomas W. & Pearl; Prickett, Don; Prince, Herbert D. & Hazel L.; Proctor, Robert F. & Phoebe I.;

Quintana, Joe E.; Quintana, Rose B.;

Radcliff, Clarence C. & Lucille; Radcliff, Harold; Rae, Irene; Ragsdale, John F.; Rainwater, Carl; Ralls, Roy; Randell, Dell; Randolph, Emery, Jr.; Rea, Earl; Rea, Paul Sidney & Irene M.; Read, Max; Red Mesa Reservoir & Ditch Company; Reddert, F. E.; Reddert, Lee; Redman, Elmer & Pauline; Reed, Max; Reeder, Charles; Reibsomer, Mildred; Retherford, Roy J.; Reynolds, R. J.; Ricca, Bernard; Richards Inc.; Ridley, William, Rietveld, William & Marion Louise; Riffey, Arnold; Riggot, Harold; Ritter, John W. & Maurice T.; Robb, Arlo T.; Robbins, Clarence; Robbins, Ralph; Robinson, Fred B. & Velma; Roberson, R. L.; Roberts, Gene; Roberts, Lee M.; Roberts, Leighton G. & Jo Estelle; Roberts, Leo M. & Constance C.; Roberts, W. W.; Robinson, Blue; Robinson, Ronald; Roelfs, E. R.; Rogers, Charlie M.; Rogers, Wayne; Roscio Brothers; Rose, Troy & Ione; Roundy, Elbert; Rowe, William; Rudd, Clayton; Runyan, Charles E.; Ryberg, William;

Safely, Martin P.; Salmon, Joe; Sambrite Cattle Co.; San Juan Branch Exp. Station; San Juan River Land Development Company; San Juan River Resort, Inc.; Sanderson, Loran; Sandford, Thomas A.; Saunders, Roy H.; Savidge, Robert B. & Margaret E.; Sayles, Phillip A.; Schaffenacker, Austin W.; Schaffer, Roscoe; Schick, Gene; School District 11 Joint; Schmitt, John; Schroeder, P. H.; Schutz, Harold; Scott, R. G.; Scott, Sandy; Self, Raymond G.; Seal, Ben; Searle, Ed; Semler, Paul G.; Semler, W. E.; Shahan, George; Sheek, Clyde; Sheperd, Roy; Shepperd, Sidney; Sherritt, Paul H.; Sherwood, Pat; Sherwood, Patricia A.; Shillingburg, Mrs. Condon G.; Shober, Joe F. & Grace V.; Shock, Lawrence, J.; Short, George; Short, Lester A. & Kathryn; Short, Merl; Short, Neil; Short, Oran W. & Vera S.; Short,

W. Alva; Shull, Ethel; Shultz, H. R.; Shunway, Charles; Shuster, Robert; Shwan, Joe; Silliman, Doyl; Simmons, John L.; Sisson, Ruby; Sittner, E. O.; Slade, F. B.; Smith, Allen; Smith, Dale & Carolyn; Smith, Mark; Snow, Nellie; Snyder, Charles; Snyder, Robert L.; South Durango Water District, Southwest Properties, Inc.; Southwestern Water Conservation District; S. W. Water Conservancy Board; S. W. Water Conservancy District; Sowers, Fred E., Speer, W. E.; Spencer, Olen; Sponsel, George; Springer, Harold A. & Ruth; Spurlock, Pat; Stall, Earl; Standard Metals Corporation; State Board of Agriculture; State of Colorado Division of Fish, Game & Parks; Stephens Development & Management Corp.; Steward, Chistery; Stewart, Wayne; Stinson, Jim; Stocker, Harold Edward & Barbara J.; Stone, Wendell L.; Stovall, Robert; Stratton, Albert; Stricklin, Jack M.; Strobel, Merle; Strobel, Ralph; Suckla, Jim; Sullivan Ditch Company; Summit Irrigation Co.; Summit Reservoir & Irrigation Co.; Sutton, Leslie D.; Swanemyr, Mary; Sylvia, Marjorie A.;

Talamante, Frank; Talley, Dale; Taylor, Catherine; Taylor, Christine; Taylor, Ellis; Taylor, Bob K.; Teal, Frank; Teeson, Mrs. Vada; Tenyck, J. W.; Terrill, Charlie C.; Therioet, Ed; Thomas, Fredrick P. & Nancy E.; Thomas, Mr. & Mrs. Mark; Thomas, Wallace; Thomas, Walter; Thompson, Art & Donna Lee; Thompson, Bert & Helene L.; Thompson, Burt; Thompson, Chester; Thompson, Emily M.; Thompson, Emma; Thompson, Elmer, Thompson, Martha M.; Thompson-Epperson Ditch Company; Tiday, Ronald L.; Tinker, John; Tinker Helen; Tinker, Ruben; Toelle, Frances B.; Toner, Archie B.; Town of Cortez; Town of Dolores; Town of Rico; Town of Silvertown; Tres Piedras, Inc.; Trimble, Garland E.; Trujillo, E. R.; Truelson, Lowell & Olive; Truelson, Val; Turner, Richard W. & Claudine B.; Turner, Richard W., Jr.; Turner, W. B.;

Underwood, R. Lincoln; Union Carbide Corporation; United States Smelting, Mining & Refining; Usher-Prescott Southside;

Valdez, Gilbert; Valdez, Joe G.; Valdez, Jose G. & Juan J.; Vanderville, Emil; Veach, Lillia A.; Velasquez, Abel; Vencil, William & Liar; Villareal, Augustine; Van Feldt, Herbert J.; Vye, Time E.;

Wade, J. H.; Wageman, Robert M.; Wagner, Roy R.; Wagoner, Clarence; Walker, James; Walker, Jimmy; Wallace, Dwight; Wallace, Geraldine; Wallace, Walter; Wampler, Harold E. & Mary A.; Warner, Addison W.; Waters, Robert; Watkins, Robert J. & Ruth F.; Weavel, Harlson; Weaver, C. J.; Weaver, Harlson; Weber Reservoir Company; Weiland, Ernest C.; Weimeyer, Ron; Welding Service & Supply, West, Walter C. & Stella M.; Western Colorado Power Company; Western Construction & Development Company; Weston, Carl R. & Jeanne; Wheat, Don R.; Wheeler, A. L.; Wheeler, Ralph; White, Frances; Whyman, R. G.; Wicker, Eldon Z.; Wightman, Howard; Wilburn, Frank; Wiley, Milton; Wilkerson, J. T.; Williams, Alton; Williams, B. F.; Williamson, H. F.; Williams, Susan B.; Wilson, David E.; Wilson, Glen & Mary T.; Wilson, Roberta; Winkler, William; Wolfswinkel, Clifford L.; Wommer Frank; Wommer, Edwin C.; Wood, Rev. J. C.; Wright, Charles A.; Wyman, David M.; Wyman, Daniel; Wynn, E.;

Young, Dale; Young, J. P.; Young, Price Pierce; Young, Agenes Therese;

Zwicker, Eldon;

All unknown claimants of interest to water in the Mancos, La Plata, Animas, Florida, Las Pinos (Pine), Piedra, Navajo and San Juan Rivers and waters tributary thereto in the state of Colorado.

Defendants.

I.

This is a civil action in which the United States seeks to have its rights and the rights of the Ute Mountain Ute and Southern Ute Indian Tribes in and to the use of the waters of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and waters tributary thereto in the State of Colorado, determined and declared. The jurisdiction of this court is invoked under Section 1345 of Title 28 of the United States Code.

II.

The members of the Ute Mountain Ute Indian Tribe live on the Ute Mountain Ute Reservation, which is located in the southwest corner of the State of Colorado. The present reservation was part of a larger reservation which was withdrawn from the public domain and reserved for the use of said Indian Tribe by the Ute Reservation Treaty of March 2, 1868. When said lands were reserved for Indian use, waters in and on said lands were withdrawn from private appropriation as against the United States and reserved for use of the Indian Tribe. The United States, on behalf of the Ute Mountain Ute Indian Tribe, claims rights in and to the use of the waters of the Mancos and San Juan Rivers and waters tributary thereto in the State of Colorado, located on said reservation; including surface, ground, and underground waters which were unappropriated on March 2, 1868, and which are or will become reasonably necessary for the present and future needs of the Indians in fulfillment of the purposes for which the reservation was created.

III.

The members of the Southern Ute Indian Tribe live on the Southern Ute Reservation which is located in the southwest corner of the State of Colorado. The present reservation was part of a larger reservation which was withdrawn from the public domain and reserved for the use of said Indian Tribe by the Ute Reservation Treaty of March 2, 1868. When said lands were reserved for Indian

use, waters in and on said lands were withdrawn from private appropriation as against the United States and reserved for use of the Indian Tribe. The United States, on behalf of the Southern Ute Tribe, claims rights in and to the use of the waters of the La Plata, Animas, Florida, Los Pinos (Pine), Piedra, San Juan and Navajo Rivers and waters tributary thereto in the State of Colorado, located on said reservation; including surface, ground, and underground waters which were unappropriated on March 2, 1868, and which are or will become reasonably necessary for the present and future needs of the Indians in fulfillment of the purposes for which the reservation was created.

IV.

Mesa Verde National Park is owned by the United States and is located within the watershed of the San Juan River and its tributaries in the State of Colorado. The lands comprising this National Park were reserved for National Park purposes on June 29, 1906, 34 Stat. 616, 617: June 30, 1913; 38 Stat. 83; February 26, 1931, 46 Stat. 1422, and December 23, 1963, 77 Stat. 473. When these lands were reserved, the unappropriated waters in and on said lands were withdrawn from private appropriation as against the United States and were reserved for use by the United States to the extent necessary for the requirements and purposes of said reservation.

V.

The Yucca House National Monument is owned by the United States and located within the watershed of the San Juan River and its tributaries in the State of Colorado. The lands comprising this National Monument were reserved for National Monument purposes on December 19, 1919, by Presidential Proclamation 1549, 41 Stat. 1781. When these lands were reserved, the unappropriated waters in and on said lands were withdrawn from private appropria-

tion as against the United States and were reserved by the United States to the extent necessary for the requirements and purposes of said reservation.

VI.

The Hovenweep National Monument is owned by the United States and located within the watershed of the San Juan River and its tributaries in the State of Colorado. The lands comprising this National Monument were reserved for National Monument purposes on March 2, 1928, by Presidential Proclamation No. 1654, 42 Stat. 2299. When these lands were reserved, the unappropriated waters in and on said lands were withdrawn from private appropriation as against the United States and were reserved for the use by the United States to the extent necessary for the requirements and purposes of said reservation.

VII.

The United States owns certain lands within the watersheds of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and their tributaries in the State of Colorado, which are administered by the Bureau of Land Management in accordance with Executive Orders, Acts of Congress, and rules and regulations promulgated by the Secretary of the Interior. The United States claims the right to the use of waters on these lands to the extent these waters have been used with priority dates as of the dates of initiation of the various uses.

VIII.

The United States claims reserved water rights in and to public waterholes and springs located within the watersheds of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and their tributaries in the State of Colorado, which were reserved for public watering purposes on April 17, 1926, pursuant to the Act of December 29, 1916, 39 Stat. 865, as amended.

IX.

The United States claims a right to the use of waters in hot springs and other waters located within the watersheds of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and water tributary thereto in the State of Colorado, which contain curative properties, and which were withdrawn from private appropriation on July 7, 1930, pursuant to the Act of March 3, 1925, 43 Stat. 1133.

X.

Under authority of the Reclamation Act of June 17, 1902, 32 Stat. 388, Reclamation projects have been initiated within the watersheds of the Los Pinos (Pine), Florida, La Plata, and Animas Rivers, and water tributary thereto, in the State of Colorado. These project are: Pine River Project, having an initiation date of November 13, 1935; the Lemon Reservoir of the Florida Project, Colorado, having an initiation date of June 10, 1936; the Florida Project Enlargement of the Florida Farmers Ditch, having an initiation date of June 5, 1946; and the Animas-La Plata, Colorado Project, having an initiation date of September 2, 1938. The United States claims priority dates for these projects as of the dates they were initiated as set forth above. The uses claimed include *inter alia;* irrigation, stockwatering, industrial manufacturing, municipal, power generation, piscatorial, recreation, flood and erosion control and wildlife propagation and preservation.

XI.

The United States owns lands in the State of Colorado that comprise the reservation presently known as the San Juan National Forest. These lands were reserved for National Forest purposes by the following: Presidential Proclamation 567, June 3, 1905; Presidential Proclamation 575, June 13, 1905; Presidential Proclamation ???, March 2, 1907; Presidential Proclamation 737, March 2, 1907; Executive Order 886, July 1, 1908; Executive Order 889, July 1, 1908; Presidential Proclamation 1076;

August 15, 1910; Presidential Proclamation 1078, August 15, 1910; Executive Order 3485, June 10, 1921; Presidential Proclamation 1841, July 6, 1928; and Public Land Order of August 19, 1947. When these lands were reserved for National Forest use, the waters in and on said lands were withdrawn from private appropriation as against the United States and were reserved for use on said lands by the United States to the extent necessary for requirements and purposes of the reservation.

XII.

The United States claims rights in and to the use of so much of the waters of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and waters tributary thereto in the State of Colorado, as is or may become necessary for the requirements and purposes of said reservation having priority dates as of the dates of the various acts of Congress, Presidential Proclamations, Executive Orders and Public Land Orders which reserved these National Forest lands.

XIII.

On October 25, 1930, a decree was entered in the case entitled *United States* v. *The Morrison Consolidate Ditch Company, et al.*, Equity No. 7736, in the District Court of the United States for the District of Colorado. This action was a suit, *inter alia*, for an adjudication of certain Indian rights to the use of waters of the Pine (Los Pinos) River in the State of Colorado. It was not, however, a complete stream adjudication. In this adjudication, rights to the use of approximately two hundred twelve (212) second feet of water from the Pine (Los Pinos) River and one (1) second foot of water from Dry Creek, a tributary of the Pine River, were decreed for use on the Southern Ute Indian Reservation. This water was to be used for "necessary economical and beneficial irrigation and for domestic purposes" for some sixteen-thousand nine-hundred sixty-six (16,966) acres of irrigable land on the "former Southern Ute Reservation," but diversions were not to be in excess of one (1)

second foot of water for each eighty (80) acres of land actually being irrigated. No determination was made in said decree as to water rights of the Indians for purposes other than irrigation and domestic uses. No determination was made as to other Federal rights to the use of waters of the Pine (Los Pinos) River. Without a determination by this Court of the legal effects of the Pine River decree upon rights and uses not asserted and not at issue in that action, and not mentioned in that decree, and upon the relative priorities as between decreed rights and rights and uses not covered by the decree, the United States cannot properly determine its rights in and to waters of the Pine River.

XIV.

The defendants and each of them claim rights in or rights to the use of the waters of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and their tributaries in the State of Colorado, which rights are adverse to and jeopardize the rights of the United States and the Ute Mountain Ute and Southern Ute Indian Tribes. All users of the aforementioned waters are necessary parties to this action.

WHEREFORE, Plaintiff prays:

1. That each and all of the defendants be required to appear before this court and set forth fully their claims in and to the use of the waters of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and waters tributary thereto in the State of Colorado.

2. That the court determine and decree that the United States holds for the benefit of the ute Mountain Ute Tribe of Indians the right to divert and use so much of the waters of the Mancos and San Juan Rivers and waters tributary thereto in the State of Colorado, located on the Ute Mountain Ute Indian Reservation, as is or may become

reasonably necessary for the needs of said Ute Mountain Ute Tribe of Indians, in fulfillment of the purposes for which the reservation was created, and that such right be declared to have a priority date of March 2, 1868.

3. That the court determine and decree that the United States holds for the benefit of the Southern Ute Tribe of Indians the right to divert and use so much of the waters of the La Plata, Animas, Florida, Los Pinos (Pine), Piedra, San Juan and Navajo Rivers, and waters tributary thereto in the State of Colorado, and located on the Southern Ute Indian Reservation as is or may become reasonably necessary for the needs of said Southern Ute Tribe of Indians, in fulfillment of the purpose for which the reservation was created, and that said rights be declared to have a priority date of March 2, 1868.

4. That the court determine and decree that the United States has the right to the use of so much of the waters of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo and San Juan Rivers and waters tributary thereto in the State of Colorado, in and on the San Juan National Forest lands within the watersheds of the aforementioned rivers as is or may become reasonably necessary for the needs and purposes of such National Forest lands, and that such right be declared to have priority dates as of the dates these lands were reserved for National Forest use.

5. That the court determine and decree that the United States has the right to the use of so much of the waters in the watershed of the San Juan River and its tributaries in the State of Colorado, in and on the lands of Mesa Verde National Park as is or will become reasonably necessary for National Park purposes, with priority dates as of the dates these lands were reserved for National Park purposes.

6. That the court determine and decree that the United States has the right to the use of so much of the waters within the watershed of the San Juan River and its tribu-

taries in and on the lands of the Yucca House National Monument, as is or will become reasonably necessary for National Monument purposes and uses, with a priority date of December 19, 1919.

7. That the court determine and decree that the United States has the right to the use of so much of the waters within the watershed of the San Juan River and its tributaries in the State of Colorado in and on the lands of Hovenweep National Monument, as is or will become reasonably necessary for National Monument purposes and uses, with a priority date of March 22, 1923.

8. That the court determine and decree that the United States has the right to the use of waters within the watersheds of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo and San Juan Rivers and waters tributary thereto in the State of colorado, on public lands where the waters have heretofore been put to beneficial use on those lands, to the extent of such use, and with priority as of the dates the use of such waters were first initiated.

9. That the court determine and decree that the United States has rights in and to public waterholes and springs located within the watersheds of the Mancos, La Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo and San Juan Rivers and waters tributary thereto in the State of Colorado, which were reserved for public watering purposes on April 17, 1926, pursuant to the Act of December 29, 1916, 39 Stat. 865, as amended, with a priority date of April 17, 1926.

10. That the court determine and decree that the United States has rights in and to certain hot springs and other waters located within the watersheds of the Mancos, La

Plata, Animas, Florida, Los Pinos (Pine), Piedra, Navajo, and San Juan Rivers and waters tributary thereto in the State of Colorado, which contain curative properties, with a priority date of July 7, 1930.

11. That this court confirm the rights of the United States to the use of the waters within the Los Pinos (Pine) River watershed and its tributaries in the State of Colorado for the Pine River Reclamation Project with a priority date of November 13, 1935.

12. That this court confirm the rights of the United States to the use of waters within the Florida River watershed and its tributaries in the State of Colorado, for the Florida Project, Lemon Reservoir with a priority date of June 10, 1936, and for the Florida Project, Enlargement of the Florida Farmers Ditch, having a priority date of June 5, 1946.

13. That this court confirm the rights of the United States to the use of waters within the Animas River and La Plata River watersheds and their tributaries in the State of Colorado, for the Animas-La Plata, Colorado Project with a priority date of September 2, 1938.

14. That the court interpret, determine, and decree the legal effect of the case entitled *United States* v. *Morrison Consolidated Ditch Company, et al.*, Equity No. 7736, in the District Court of the United States for the District of Colorado, decided October 25, 1930.

15. That the court enter its order enjoining all of the diversions and uses of the waters adjudicated herein except in accordance with the rights and priorities as set forth in the Court's decree.

16. That the court appoint a Water Master to administer the waters adjudicated herein and the respective rights of all users therefrom, all in accordance with the orders and directives of this court.

17. That the court enter such further orders and decrees as may be just and proper for an adjudication of the parties' rights to the use of the waters adjudicated herein.

/s/ WALTER KIECHEL, JR.
Walter Kiechel, Jr.
Deputy Assistant
Attorney General
Department of
Justice
Washington, D. C.

By: /s/ JAMES L. TREECE
United States Attorney

/s/ KENNETH J. BURKE
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/s/ GENE ALAN ERL
Gene Alan Erl
Attorney
Department of Justice
Washington, D. C.

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Little Colorado River and the Tributaries thereof, including Show Low Creek and East Clear Creek. PHELPS DODGE CORPORATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW, the PHELPS DODGE CORPORATION, a New York corporation authorized to do business in Arizona, by and through its attorneys, Evans, Kitchel & Jenckes, P.C., and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, PHELPS DODGE CORPORATION, is extensively engaged in the business of mining and smelting copper ore throughout the State of Arizona.

II.

That the Petitioner conducts a substantial amount of its mining and smelting activities at its operations in Morenci, County of Greenlee, State of Arizona.

III.

That Petitioner's Morenci operations require the availability of reliable supplies of water, which Petitioner has appropriated and is appropriating to a beneficial use from Show Low Creek and East Clear Creek, both of which are tributaries of the Little Colorado River.

IV.

That not all of the rights to the use of water from the Little Colorado River and its tributaries have been duly adjudicated and approved by that certain decree entered in the case of *St. Johns Irrigation Company v. Round Valley*

Water Storage & Ditch Company, No. _____ (1918), Superior Court of the State of Arizona, in and for the County of Apache.

V.

That the said case did not adjudicate and approve the rights of Petitioner to the use of water from Show Low Creek and East Clear Creek, both of which are tributaries of the Little Colorado River.

VI.

That several parties have asserted rights to waters of Show Low Creek and East Clear Creek presently being appropriated to a beneficial use by Petitioner.

VII.

That Petitioner has appropriated and put to beneficial use the waters of Show Low Creek and East Clear Creek at such times and in such quantities as to accord Petitioner prior and superior rights to the use of said waters as against any other claimant.

VIII.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from Show Low Creek and East Clear Creek and perhaps other tributaries of the Little Colorado River has been made for the land situated within the Little Colorado River Basin area, which said land is more particularly described by township and range in Exhibit "A", attached hereto and by reference incorporated herein.

IX.

That a determination of the relative rights of the various claimants to the waters of the entire Little Colorado River System, including Show Low Creek and East Clear Creek, in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, sections 45-231 through 45-245, is justified by reason of the large number of

claimants to establish the legal rights of each and by reason of the importance and significance to the State of Arizona of Petitioner's present use of water from the Show Low Creek and East Clear Creek.

WHEREFORE, Petitioner, PHELPS DODGE CORPORATION, by and through its attorneys, Evans, Kitchel & Jenckes, P.C., respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated within the Little Colorado River System, as described in Exhibit "A", pursuant to Arizona Revised Statutes, sections 45-231 through 45-245.

DATED this 17th day of February, 1978.

EVANS, KITCHEL & JENCKES, P.C.

By /s/ JERRY L. HAGGARD

Jerry L. Haggard
363 North First Avenue
Phoenix, Arizona 85003
Attorneys for Phelps Dodge
Corporation

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Little Colorado River and the Tributaries thereof, Including Show Low Creek and East Clear Creek. PHELPS DODGE CORPORATION, *Petitioner.*	VERIFICATION

JERRY L. HAGGARD, being first duly sworn, upon his oath deposes and says:

That he represents the Petitioner, PHELPS DODGE CORPORATION, in the above entitled matter, and that he has read the above and foregoing petition and knows the contents thereof; that the same is true of his own personal knowledge except as to those statements made therein upon information and belief and as to those, he believes them to be true.

/s/ JERRY L. HAGGARD
Jerry L. Haggard

SUBSCRIBED AND SWORN to before me this 17th day of February, 1978.

/s/ DEBORAH R. LINGENFELTER
Notary Public
/s/ (nee McDaniel)

My Commission Expires May 31, 1980

EXHIBIT A

LITTLE COLORADO RIVER WATERSHED

Township	Range	
6N	27E	Defective Application
6N	29E*	
6N	30E*	
7N	27E*	
7N	28E*	
7N	29E*	
7N	30E*	
7N	31E*	
8N	22E	Protest Hearing Held and Candidate for Permit
8N	23E*	
8N	27E*	
8N	28E*	
8N	29E*	
8N	30E*	
8N	31E*	
9N	22E*	
9N	23E*	
9N	25E*	
9N	26E*	
9N	27E	Protest Hearing Held
9N	28E*	
9N	29E*	
10N	20E*	
10N	21E*	
10N	22E*	
10N	24E*	
10N	25E*	
10N	26E*	
10N	27E*	
10N	28E*	

*Certificates issued.

Township	Range	
11N	13E*	
11N	14E*	
11N	15E*	
11N	16E	Candidate for Permit
11N	19E*	
11N	20E	Candidate for Permit
11N	23E	Application
11N	24E	Candidate for Permit
11N	25E*	
11N	26E*	
11N	27E	Application
12N	9E*	
12N	10E*	
12N	11E*	
12N	12E*	
12N	13E*	
12N	18E*	
12N	19E*	
12N	24E*	
12N	25E*	
12N	26E*	
12N	27E*	
13N	10E*	
13N	11E*	
13N	12E*	
13N	13E*	
13N	14E*	
13N	21E*	
13N	23E	Candidate for Permit
13N	26E*	
13N	27E*	
13N	28E*	
14N	10E*	
14N	11E*	

*Certificates issued.

Township	Range	
14N	12E*	
14N	14E*	
14N	17E*	
14N	18E*	
14N	19E*	
14N	23E	Candidate for Permit
14N	26E*	
14N	27E*	
14N	28E*	
15N	10E*	
15N	11E*	
15N	12E*	
15N	13E*	
15N	15E*	
15N	16E*	
15N	17E*	
15N	28E*	
16N	10E*	
16N	11E*	
16N	12E*	
16N	17E*	
16N	29E*	
17N	9E*	
17N	10E*	
17N	11E*	
17N	12E*	
17N	13E*	
17N	20E	Candidate for Permit
17N	29E*	
18N	8E*	
18N	9E*	
18N	10E*	
18N	11E*	
18N	12E*	

*Certificates issued.

Township	Range	
18N	13E*	
18N	14E*	
18N	15E*	
18N	16E*	
18N	17E*	
18N	21E	Candidate for Permit
18N	22E	Candidate for Permit
19N	7E*	
19N	8E*	
19N	9E*	
19N	10E*	
19N	11E	Candidate for Permit
19N	12E*	
19N	16E*	
19N	19E	Candidate for Permit
19N	21E	Candidate for Permit
19N	22E	Candidate for permit
19N	23E	Candidate for Permit
19N	26E	Candidate for Permit
20N	6E*	
20N	7E	Candidate for Permit
20N	8E*	
20N	9E*	
20N	11E	Candidate for Permit
20N	12E*	
20N	13E	Proof of Appropriation
20N	21E	Candidate for Permit
20N	22E	Candidate for Permit
20N	23E	Candidate for Permit
21N	6E	Candidate for Permit and Affidavit
21N	7E*	
21N	9E*	
21N	11E	Candidate for Permit
21N	20E	Candidate for Permit

*Certificates issued.

Township	Range	
22N	6E*	
22N	7E*	
22N	8E*	
22N	9E*	
22N	26E*	
23N	6E*	
23N	7E*	
23N	8E*	
23N	12E*	
24N	5E	Candidate for Permit
24N	6E	Candidate for Permit and Protest Hearing Held
24N	7E*	
24N	10E*	
24N	11E*	
25N	5E	Candidate for Permit and Protest Hearing Held
25N	6E	Candidate for Permit and Protested Application
25N	7E	Candidate for Permit
25N	9E*	
25N	10E*	
26N	2E	Candidate for Permit
26N	4E	Candidate for Permit
26N	5E	Candidate for Permit
26N	6E	Candidate for Permit and Affidavit
26N	7E	Candidate for Permit
26N	8E	Candidate for Permit
26N	9E	Candidate for Permit
27N	4E	Candidate for Permit
27N	5E	Candidate for Permit
27N	6E	Candidate for Permit and Protest Hearing Held

*Certificates issued.

Township	Range	
27N	7E*	
27N	8E	Candidate for Permit
27N	9E*	
27N	10E	Candidate for Permit
28N	5E	Candidate for Permit and Protest Hearing Held
28N	6E	Candidate for Permit and Protest Hearing Held
29N	5E	Protest Hearing Held
29N	9E*	

*Certificates issued.

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Little Colorado River and the Tributaries thereof, Including Show Low Creek and East Clear Creek. PHELPS DODGE CORPORATION, *Petitioner.*	SUPPLEMENTAL PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW, the PHELPS DODGE CORPORATION, a New York corporation authorized to do business in Arizona, by and through its attorneys, Evans, Kitchel & Jenckes, P.C., and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, PHELPS DODGE CORPORATION, pursuant to A.R.S. § 45-231(A), filed on February 17, 1978 a Petition to Determine Conflicting Water Rights with respect to use of the waters of Show Low Creek and East Clear Creek, each of which is a tributary of the Little Colorado River.

II.

That said Petition requested the State Land Commissioner to determine the relative rights of various claimants to all waters of the Little Colorado River System, including Show Low Creek and East Clear Creek, that had not been adjudicated and approved by that certain decree entered in the case of *St. Johns Irrigation Company v. Round Valley Water Storage & Ditch Company*, No. _____ (1918), Superior Court of the State of Arizona, in and for the County of Apache.

III.

That said Petition described in Exhibit "A" attached thereto the land areas in which the determination of the State Land Commissioner was sought, the said land areas being those in which the State Land Department records indicate there exist claims to water rights.

IV.

That Petitioner is informed, and therefore believes, that there are additional lands in which there exist claims to water rights not disclosed by the State Land Department records with respect to which the requested determination should also be made.

V.

That Exhibit "A" attached hereto and incorporated herein by reference describes all of the areas in which said determination is sought.

WHEREFORE, Petitioner, PHELPS DODGE CORPORATION, by and through its attorneys, Evans, Kitchel & Jenckes, P.C., respectfully requests that Exhibit "A" attached hereto be substituted in the place of and supersede Exhibit "A" attached to the Petition to Determine Conflicting Water Rights.

DATED this 19th day of April, 1978.

EVANS, KITCHEL & JENCKES, P.C.

By /s/ ALVIN H. SHRAGO

Jerry L. Haggard
Alvin H. Shrago
363 North First Avenue
Phoenix, Arizona 85003
Attorneys for Phelps Dodge Corporation

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Little Colorado River and the Tributaries thereof, Including Show Low Creek and East Clear Creek. PHELPS DODGE CORPORATION, *Petitioner.*	VERIFICATION

ALVIN H. SHRAGO, being first duly sworn, upon his oath deposes and says:

That he represents the Petitioner, PHELPS DODGE CORPORATION, in the above entitled matter, and that he has read the above and foregoing petition and knows the contents thereof; that the same is true of his own personal knowledge except as to those statements made therein upon information and belief and as to those, he believes them to be true.

/s/ ALVIN H. SHRAGO
Alvin H. Shrago

SUBSCRIBED AND SWORN to before me this 19th day of April, 1978.

/s/ DEBORAH R. LINGENFELTER
Notary Public
/s/ (nee McDaniel)

My Commission Expires May 31, 1980

EXHIBIT A

LITTLE COLORADO RIVER WATERSHED
Gila and Salt River Meridian

Township	Range	
6N	26E	
6N	27E	Defective Application
6N	28E	
6N	29E*	
6N	30E*	
6N	31E	
7N	26E	Partially unsurveyed
7N	27E*	
7N	28E*	
7N	29E*	
7N	30E*	
7N	31E*	
8N	22E	Protest Hearing Held and Candidate for Permit - Partially unsurveyed
8N	23E*	Partially unsurveyed
8N	24E	Partially unsurveyed
8N	25E	Partially unsurveyed
8N	26E	Partially unsurveyed
8N	27E*	
8N	28E*	
8N	29E*	
8N	30E*	
8N	31E*	
9N	21E	
9N	22E*	
9N	23E*	
9N	25E*	
9N	26E*	
9N	27E	Protest Hearing Held
9N	28E*	

* Certificates issued.

Township	Range	
9N	29E*	
9N	30E	
9N	31E	
10N	16E	Partially unsurveyed
10N	17E	Partially unsurveyed
10N	18E	
10N	19E	
10N	20E*	
10N	21E*	
10N	22E*	
10N	23E	
10N	24E*	
10N	25E*	
10N	26E*	
10N	27E*	
10N	28E*	
10N	29E	
10N	30E	
10N	31E	
11N	12E	
11N	13E*	
11N	14E*	
11N	15E*	
11N	16E	Candidate for Permit
11N	17E	
11N	18E	
11N	19E*	
11N	20E	Candidate for Permit
11N	21E	
11N	22E	
11N	23E	Application
11N	24E	Candidate for Permit
11N	25E*	
11N	26E*	

* Certificates issued.

Township	Range	
11N	27E	Application
11N	28E	
11N	29E	
11N	30E	
11N	31E	
12N	9E*	
12N	10E*	
12N	11E*	
12N	12E*	
12N	13E*	
12N	14E	
12N	15E	
12N	16E	
12N	17E	
12N	18E*	
12N	19E*	
12N	20E	
12N	21E	
12N	22E	
12N	23E	
12N	24E*	
12N	25E*	
12N	26E*	
12N	27E*	
12N	28E	
12N	29E	
12N	30E	
12N	31E	
13N	9E	
13N	10E*	
13N	11E*	
13N	12E*	
13N	13E*	
13N	14E*	

* Certificates issued.

Township	Range	
13N	15E	
13N	16E	
13N	17E	
13N	18E	
13N	19E	
13N	20E	
13N	21E*	
13N	22E	
13N	23E	Candidate for Permit
13N	24E	
13N	25E	
13N	26E*	
13N	27E*	
13N	28E*	
13N	29E	
13N	30E	
13N	31E	
14N	10E*	
14N	11E*	
14N	12E*	
14N	13E	
14N	14E*	
14N	15E	
14N	16E	
14N	17E*	
14N	18E*	
14N	19E*	
14N	20E	
14N	21E	
14N	22E	
14N	23E	Candidate for Permit
14N	24E	
14N	25E	
14N	26E*	
14N	27E*	

* Certificates issued.

Township	Range
14N	28E*
14N	29E
14N	30E
14N	31E
15N	10E*
15N	11E*
15N	12E*
15N	13E*
15N	14E
15N	15E*
15N	16E*
15N	17E*
15N	18E
15N	19E
15N	20E
15N	21E
15N	22E
15N	23E
15N	24E
15N	25E
15N	26E
15N	27E
15N	28E*
15N	29E
15N	30E
15N	31E
16N	9E
16N	10E*
16N	11E*
16N	12E*
16N	13E
16N	14E
16N	15E
16N	16E

* Certificates issued.

Township	Range	
16N	17E*	
16N	18E	
16N	19E	
16N	20E	
16N	21E	
16N	22E	
16N	23E	
16N	24E	
16N	25E	
16N	26E	
16N	27E	
16N	28E	
16N	29E*	
16N	30E	
16N	31E	
17N	8E	
17N	9E*	
17N	10E*	
17N	11E*	
17N	12E*	
17N	12½E	
17N	13E*	
17N	14E	
17N	15E	
17N	16E	
17N	17E	
17N	18E	
17N	19E	
17N	20E	Candidate for Permit
17N	21E	
17N	22E	
17N	23E	
17N	24E	
17N	25E	
17N	26E	

* Certificates issued.

Township	Range	
17N	27E	
17N	28E	
17N	29E*	
17N	30E	
17N	31E	
18N	8E*	
18N	9E*	
18N	10E*	
18N	11E*	
18N	12E*	
18N	12½E	
18N	13E*	
18N	14E*	
18N	15E*	
18N	16E*	
18N	17E*	
18N	18E	
18N	19E	
18N	20E	
18N	21E	Candidate for Permit
18N	22E	Candidate for Permit
18N	23E	
18N	24E	
18N	25E	
18N	26E	
18N	27E	
18N	28E	
18N	29E	
18N	30E	
18N	31E	
19N	7E*	
19N	8E*	
19N	9E*	
19N	10E*	

* Certificates issued.

Township	Range	
19N	11E	Candidate for Permit
19N	12E*	
19N	12½E	
19N	13E	
19N	14E	
19N	15E	
19N	16E*	
19N	17E	
19N	18E	
19N	19E	Candidate for Permit
19N	20E	
19N	21E	Candidate for Permit
19N	22E	Candidate for Permit
19N	23E	Candidate for Permit
19N	24E	
19N	25E	
19N	26E	Candidate for Permit
19N	27E	
19N	28E	
19N	29E	
19N	30E	
19N	31E	
20N	6E*	
20N	7E	Candidate for Permit
20N	8E*	
20N	9E*	
20N	10E	
20N	11E	Candidate for Permit
20N	12E*	
20N	12½E	
20N	13E	Proof of Appropriation
20N	14E	
20N	15E	
20N	16E	
20N	17E	

* Certificates issued.

Township	Range	
20N	18E	
20N	19E	
20N	20E	
20N	21E	Candidate for Permit
20N	22E	Candidate for Permit
20N	23E	Candidate for Permit
20N	24E	
20N	25E	
20N	26E	
20N	27E	
20N	28E	
20N	29E	
20N	30E	
21N	6E	Candidate for Permit and Affidavit
21N	7E*	
21N	8E	
21N	9E*	
21N	10E	
21N	11E	Candidate for Permit
21N	12E	Partially unsurveyed
21N	12½E	Partially unsurveyed
21N	13E	Partially unsurveyed
21N	14E	Partially unsurveyed
21N	15E	
21N	16E	
21N	17E	
21N	18E	
21N	19E	
21N	20E	Candidate for Permit
21N	21E	
21N	22E	
21N	23E	
21N	24E	
21N	25E	
21N	26E	

* Certificates issued.

Township	Range	
21N	27E	
21N	28E	
21N	29E	
21N	30E	
21N	31E	
22N	6E*	
22N	7E*	
22N	8E*	
22N	9E*	
22N	10E	
22N	11E	
22N	12E	Partially unsurveyed
22N	12½E	Partially unsurveyed
22N	13E	Partially unsurveyed
22N	14E	Partially unsurveyed
22N	15E	
22N	16E	
22N	17E	
22N	18E	
22N	19E	
22N	20E	
22N	21E	
22N	22E	
22N	23E	
22N	24E	
22N	25E	
22N	26E*	
22N	27E	
22N	28E	
22N	29E	
22N	30E	
22N	31E	
23N	5E	
23N	6E*	

* Certificates issued.

Township	Range	
23N	7E*	
23N	8E*	
23N	9E	
23N	10E	
23N	11E	Partially unsurveyed
23N	12E*	Totally unsurveyed
23N	12½E	Totally unsurveyed
23N	13E	Totally unsurveyed
23N	14E	Partially unsurveyed
23N	15E	
23N	16E	
23N	17E	
23N	18E	
23N	19E	
23N	20E	
23N	21E	
23N	22E	Partially unsurveyed
23N	23E	Partially unsurveyed
23N	24E	Partially unsurveyed
23N	25E	Partially unsurveyed
23N	26E	
23N	27E	
23N	28E	Partially unsurveyed
23N	29E	
23N	30E	
23N	31E	
24N	5E	Candidate for Permit
24N	6E	Candidate for Permit and Protest Hearing Held
24N	7E*	
24N	8E	
24N	9E	
24N	10E*	
24N	11E*	Partially unsurveyed
24N	12E	Totally unsurveyed

* Certificates issued.

Township	Range	
24N	12½E	Totally unsurveyed
24N	13E	Totally unsurveyed
24N	14E	Partially unsurveyed
24N	15E	
24N	16E	
24N	17E	
24N	18E	
24N	19E	
24N	20E	
24N	21E	
24N	22E	Partially unsurveyed
24N	23E	Partially unsurveyed
24N	24E	Partially unsurveyed
24N	25E	Partially unsurveyed
24N	26E	Partially unsurveyed
24N	27E	Partially unsurveyed
24N	28E	Partially unsurveyed
24N	29E	Partially unsurveyed
24N	30E	Partially unsurveyed
24N	31E	Partially unsurveyed
25N	5E	Candidate for Permit and Protest Hearing Held
25N	6E	Candidate for Permit and Protest Hearing Held
25N	7E	Candidate for Permit
25N	8E	
25N	9E*	
25N	10E*	
25N	11E	Partially unsurveyed
25N	12E	Totally unsurveyed
25N	12½E	Totally unsurveyed
25N	13E	
25N	14E	
25N	15E	
25N	16E	

* Certificates issued.

Township	Range	
25N	17E	
25N	18E	
25N	19E	
25N	20E	
25N	21E	
25N	22E	Partially unsurveyed
25N	23E	Partially unserveyed
25N	24E	Partially unsurveyed
25N	25E	
25N	26E	
25N	27E	Partially unsurveyed
25N	28E	
25N	29E	
25N	30E	
25N	31E	Partially unsurveyed
26N	2E	Candidate for Permit
26N	4E	Candidate for Permit
26N	5E	Candidate for Permit
26N	6E	Candidate for Permit
26N	7E	Candidate for Permit
26N	8E	Candidate for Permit
26N	9E	Candidate for Permit
26N	10E	Partially unsurveyed
26N	11E	Totally unsurveyed
26N	12E	Totally unsurveyed
26N	12½E	Totally unsurveyed
26N	13E	
26N	14E	
26N	15E	
26N	16E	
26N	17E	
26N	18E	
26N	19E	
26N	20E	
26N	21E	Partially unsurveyed
26N	22E	Totally unsurveyed

Township	Range	
26N	23E	Totally unsurveyed
26N	24E	Partially unsurveyed
26N	25E	
26N	26E	
26N	27E	Partially unsurveyed
26N	28E	
26N	29E	
26N	30E	Partially unsurveyed
26N	31E	Partially unsurveyed
27N	4E	Candidate for Permit
27N	5E	Candidate for Permit
27N	6E	Candidate for Permit and Protest Hearing Held
27N	7E*	
27N	8E	Candidate for Permit
27N	9E*	
27N	10E	Partially unsurveyed - Candidate for Permit
27N	11E	Totally unsurveyed
27N	12E	Totally unsurveyed
27N	12½E	Totally unsurveyed
27N	13E	
27N	14E	
27N	15E	
27N	16E	
27N	17E	
27N	18E	
27E	19E	
27N	20E	
27N	21E	Partially unsurveyed
27N	22E	Totally unsurveyed
27N	23E	Totally unsurveyed
27N	24E	Totally unsurveyed
27N	25E	Partially unsurveyed
27N	26E	Partially unsurveyed

* Certificates issued.

Township	Range	
27N	27E	Partially unsurveyed
27N	28E	Partially unsurveyed
27N	29E	Partially unsurveyed
27N	30E	Partially unsurveyed
27N	31E	Partially unsurveyed
28N	4E	
28N	5E	Candidate for Permit and Protest Hearing Held
28N	6E	Candidate for Permit and Protest Hearing Held
28N	7E	
28N	8E	
28N	9E	
28N	10E	Partially unsurveyed
28N	11E	Totally unsurveyed
28N	12E	Totally unsurveyed
28N	12½E	Totally unsurveyed
28N	13E	
28N	14E	
28N	15E	
28N	16E	
28N	17E	
28N	18E	
28N	19E	
28N	20E	Partially unsurveyed
28N	21E	Totally unsurveyed
28N	22E	Totally unsurveyed
28N	23E	Totally unsurveyed
29N	5E	Partially unsurveyed - Protest Hearing Held
29N	6E	Partially unsurveyed
29N	7E	
29N	8E	Partially unsurveyed
29N	9E*	Partially unsurveyed

* Certificates issued.

Township	Range	
29N	10E	Totally unsurveyed
29N	11E	Totally unsurveyed
29N	12E	Totally unsurveyed
29N	12½E	Totally unsurveyed
29N	13E	
29N	14E	
29N	15E	
29N	16E	
29N	17E	
29N	18E	
29N	19E	
29N	20E	Partially unsurveyed
29N	21E	Totally unsurveyed
29N	22E	Totally unsurveyed
29N	23E	Totally unsurveyed
30N	4E	Partially unsurveyed
30N	5E	Partially unsurveyed
30N	6E	Partially unsurveyed
30N	7E	Partially unsurveyed
30N	8E	Partially unsurveyed
30N	9E	Partially unsurveyed
30N	10E	Partially unsurveyed
30N	11E	Partially unsurveyed
30N	12E	Partially unsurveyed
30N	12½E	Partially unsurveyed
30N	13E	
30N	14E	
30N	15E	
30N	16E	
30N	17E	
30N	18E	
30N	19E	
30N	20E	Partially unsurveyed
30N	21E	Totally unsurveyed
30N	22E	Totally unsurveyed
30N	23E	Totally unsurveyed

Township	Range	
31N	4E	Partially unsurveyed
31N	5E	Partially unsurveyed
31N	6E	Partially unsurveyed
31N	7E	Partially unsurveyed
31N	8E	Partially unsurveyed
31N	9E	Partially unsurveyed
31N	10E	Partially unsurveyed
31N	11E	Totally unsurveyed
31N	12E	Partially unsurveyed
31N	12½E	Partially unsurveyed
31E	13E	
31E	14E	
31E	15E	
31E	16E	
31E	17E	
31E	18E	
31E	19E	Partially unsurveyed
31E	20E	Totally unsurveyed
31E	21E	Totally unsurveyed
31E	22E	Totally unsurveyed
32N	6E	Totally unsurveyed
32N	7E	Totally unsurveyed
32N	8E	Partially unsurveyed
32N	9E	Partially unsurveyed
32N	10E	
32N	11E	
32N	12E	Partially unsurveyed
32N	12½E	Partially unsurveyed
32N	13E	Partially unsurveyed
32N	14E	Partially unsurveyed
32N	15E	Partially unsurveyed
32N	16E	Partially unsurveyed
32N	17E	Partially unsurveyed
32N	18E	Partially unsurveyed
32N	19E	Totally unsurveyed
32N	20E	Totally unsurveyed

Township	Range	
32N	21E	Totally unsurveyed
32N	22E	Totally unsurveyed
33N	6E	Totally unsurveyed
33N	7E	Totally unsurveyed
33N	8E	Totally unsurveyed
33N	9E	Partially unsurveyed
33N	10E	
33N	11E	Partially unsurveyed
33N	12E	Partially unsurveyed
33N	12½E	
33N	13E	Totally unsurveyed
33N	14E	Totally unsurveyed
33N	15E	Totally unsurveyed
33N	16E	Totally unsurveyed
33N	17E	Totally unsurveyed
33N	18E	Totally unsurveyed
33N	19E	Totally unsurveyed
33N	20E	Totally unsurveyed
33N	21E	Totally unsurveyed
33N	22E	Totally unsurveyed
33N	23E	Totally unsurveyed
34N	6E	Totally unsurveyed
34N	7E	Totally unsurveyed
34N	8E	Totally unsurveyed
34N	9E	Totally unsurveyed
34N	10E	Totally unsurveyed
34N	11E	Totally unsurveyed
34N	12E	Totally unsurveyed
34N	12½E	Totally unsurveyed
34N	13E	Totally unsurveyed
34N	14E	Totally unsurveyed
34N	15E	Totally unsurveyed
34N	16E	Totally unsurveyed
34N	17E	Totally unsurveyed
34N	18E	Totally unsurveyed
34N	19E	Totally unsurveyed

Township	Range	
34N	20E	Totally unsurveyed
34N	21E	Totally unsurveyed
34N	22E	Totally unsurveyed
34N	23E	Totally unsurveyed
35N	8E	Totally unsurveyed
35N	9E	Totally unsurveyed
35N	10E	Totally unsurveyed
35N	11E	Totally unsurveyed
35N	12E	Totally unsurveyed
35N	12½E	Totally unsurveyed
35N	13E	Totally unsurveyed
35N	14E	Totally unsurveyed
35N	15E	Totally unsurveyed
35N	16E	Totally unsurveyed
35N	17E	Totally unsurveyed
35N	18E	Totally unsurveyed
35N	19E	Totally unsurveyed
35N	20E	Totally unsurveyed
35N	21E	Totally unsurveyed
35N	22E	Totally unsurveyed
35N	23E	Totally unsurveyed
36N	8E	Totally unsurveyed
36N	9E	Totally unsurveyed
36N	10E	Totally unsurveyed
36N	11E	Totally unsurveyed
36N	12E	Totally unsurveyed
36N	12½E	Totally unsurveyed
36N	13E	Totally unsurveyed
36N	14E	Totally unsurveyed
36N	15E	Totally unsurveyed
36N	16E	Totally unsurveyed
36N	17E	Totally unsurveyed
36N	18E	Totally unsurveyed

Township	Range	
36N	19E	Totally unsurveyed
36N	20E	Totally unsurveyed
36N	21E	Totally unsurveyed
36N	22E	Totally unsurveyed
37N	8E	Totally unsurveyed
37N	9E	Totally unsurveyed
37N	13E	Totally unsurveyed
37N	14E	Totally unsurveyed
37N	15E	Totally unsurveyed
37N	16E	Totally unsurveyed
37N	17E	Totally unsurveyed
37N	18E	Totally unsurveyed
37N	19E	Totally unsurveyed
37N	20E	Totally unsurveyed
38N	15E	Totally unsurveyed
38N	16E	Totally unsurveyed
38N	17E	Totally unsurveyed
39N	15E	Totally unsurveyed
39N	16E	Totally unsurveyed

NAVAJO BASELINE

Township	Range	
1N	5W	Partially unsurveyed
1N	6W	
1N	7W	
1N	8W	Partially unsurveyed
1N	9W	
1N	10W	
1N	11W	
2N	5W	Partially unsurveyed
2N	6W	
2N	7W	

Township	Range	
2N	8W	Partially unsurveyed
2N	9W	Partially unsurveyed
3N	6W	
3N	7W	
4N	5W	
4N	6W	

TREATY OF 1868

Treaty of 1868

Treaty between the United States of America
and the Navajo Tribe of Indians;
Concluded June 1, 1868; Ratification advised July 25, 1868;
Proclaimed August 12, 1868 (15 Stat. 667)

ANDREW JOHNSON,
President of the United States of America,
To all and singular to whom these presents shall come, greeting:

WHEREAS a treaty was made and concluded at Fort Sumner, in the territory of New Mexico, on the first day of June, in the year of our Lord, one thousand eight hundred and sixty-eight, by and between Lieutenant-General W.T. Sherman and Samuel F. Tappan, commissioners, on the part of the United States and Barboncito Armijo, and other chiefs and headmen of the Navajo tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

ARTICLES of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant-General W.T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo Nation or tribe of Indians, represented by their chiefs and head-men, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and headmen being hereto subscribed,) of the other part, witness:

ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss whilst violating, or because of his violating, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

ARTICLE II. The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Cañon

Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oso, Bear Spring, and west by a parallel of longitude about 109° 30′ west of Greenwich, provided it embraces the outlet of the Cañon-de-Chilly, which cañon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no persons except those herein so authorized to do, and except such officers, soldiers, agents, and employes of the Government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

ARTICLE III. The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter-shop and blacksmith-shop, not to cost exceeding one thousand dollars each; and a schoolhouse and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

ARTICLE IV. The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all

cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

ARTICLE V. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land-book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Navajo Land-book."

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each.

The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper.

ARTICLE VI. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

The provisions of this article to continue for not less than ten years.

ARTICLE VII. When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

ARTICLE VIII. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian—each Indian being encouraged to manufacture their own clothing, blankets, etc.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

ARTICLE IX. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccu-

pied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2d. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3d. That they will not attack any persons at home or travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in future oppose the construction of railroads, wagon-roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.

7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE X. No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least

three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article [5] of this treaty.

ARTICLE XI. The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

ARTICLE XII. It is further agreed by and between the parties to this agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any condition provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Bosque Redondo reservation to the reservation, say fifty thousand dollars.

2d. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3d. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mexico, and when completed, the management of the Tribe to revert to the proper agent.

ARTICLE XIII. The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart for the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

In testimony of all which the said parties have hereunto, on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

W. T. SHERMAN,
Lt. Gen'l, Indian Peace Commissioner.

S. F. TAPPAN,
Indian Peace Commissioner.

BARBONCITO, *Chief.*	his x mark
ARMIJO.	his x mark
DELGADO.	his x mark

Manuelito.	his x mark
Largo.	his x mark
Herrero.	his x mark
Chiqueto.	his x mark
Muerto De Hombre.	his x mark
Hombro.	his x mark
Norbono.	his x mark
Narbono Segundo.	his x mark
Gañado Mucho.	his x mark

COUNCIL:

Riquo.	his x mark
Juan Martin.	his x mark
Serginto.	his x mark
Grande.	his x mark
Inoetenito.	his x mark
Muchachos Mucho.	his x mark
Chiqueto Segundo.	his x mark
Cabello Amarillo.	his x mark
Francisco.	his x mark
Torivio.	his x mark
Desdendado.	his x mark
Juan.	his x mark
Guero.	his x mark
Gugadore.	his x mark
Cabason.	his x mark
Barbon Segundo.	his x mark
Cabares Colorados.	his x mark

Attest:

Geo. W. G. Getty,
Col. 37th Inf'y, Bt. Maj. Gen'l U.S.A.

B. S. Roberts,
Bt. Brg. Gen'l U.S.A., Lt. Col. 3d Cav'y.

J. Cooper McKee,
Bt. Lt. Col. Surgeon U.S.A.

Theo. H. Dodd,
U.S. Indian Ag't for Navajos.

CHAS. MCCLURE,
Bt. Maj. and C.S.U.S.A.

JAMES F. WEEDS,
Bt. Maj. and Asst. Surg. U.S.A.

J. C. SUTHERLAND,
Interpreter.

WILLIAM VAUX,
Chaplain, U.S.A.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

SALT RIVER VALLEY WATER USERS ASSOCIATION, *Plaintiff,* v. WHITE MOUNTAIN APACHE TRIBE, *Defendant.*	CIV 79-182 PHX VAC

SALT RIVER VALLEY WATER USERS ASSOCIATION, *Plaintiff,* v. GILA RIVER INDIAN COMMUNITY, *Defendant.*	CIV 79-183 PHX VAC

SALT RIVER VALLEY WATER USERS ASSOCIATION, *Plaintiff,* v. PIMA-MARICOPA INDIAN COMMUNITY, *Defendant.*	CIV 79-184 PHX VAC

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY,
Plaintiff,
v.
THE STATE OF ARIZONA and JOHN M. LITTLE,
Defendants.

CIV 79-185 PHX VAC

September 21, 1979
Phoenix, Arizona

THE CLERK: Case number 79-182 Phoenix, Salt River Valley Water Users Association versus White Mountain Apache Tribe, Civil 79-183 Phoenix, Salt River Valley Water Users Association versus Gila River Indian Community; Salt River Valley Water Users Association versus Salt River Pima-Maricopa Indian Community which is Civil 79-184 Phoenix, Civil 79-184, Salt River Pima-Maricopa Indian Community versus The State of Arizona and John M. Little; Civil 79-186. Phoenix, San Carlos Apache Tribe of Arizona versus the State of Arizona et al; Civil 79-187 Phoenix, Payson Community of Yavapai-Apache Indians versus the State of Arizona, et al, for hearing on Motions to Dismiss and Motions to Remand by the Salt River Valley Water Users Association and the State of Arizona.

THE COURT: First of all, will counsel identify themselves for the record and do it in a numerical sequence, first Cause Number, 182 and then on down the line to cause 187.

MR. LEWIS: Byron Lewis of the firm of Jennings, Strouss and Salmon. I am appearing on behalf of the Salt River Valley Water Users Association, the Salt River Project Agricultural Improvement and Power District appearing in 182, 183, 184, 186, 187, the Fort McDowell proceeding, 267.

THE COURT: Thank you, Mr. Lewis.

MISS RIHR: William Veeder for the White Mountain Apache Tribe. Kathleen Rihr, local counsel. Mr. Veeder will be presenting the oral argument and has been admitted to the bar of this court. It's cause number 182.

MR. COX: I am Z. Simpson Cox for cause number 183 Gila River Indian Community. My associates have all their names in. I won't go through them all.

I thought we would also hear our Motion to Dismiss which I understood in our conference with opposing counsel and other counsel on other days, in addition to the Motions that the Salt River Water Users Association, the State of Arizona on their Motion to Remand and Motion to Dismiss.

THE COURT: Those are on the agenda. The Court however, is taking first the motion which the Court mentioned in the numerical sequence because those motions have in common that they were filed by the Water Users and by the State of Arizona. Any other counsel present for any of those parties?

MR. SHEA: Philip Shea for the Salt River Pima-Maricopa Indian Community, which is cause numbers 184 and 185.

MR. SPARKS: Joe Sparks from the firm of Sparks and Siler, Scottsdale. We represent the San Carlos Apache Tribe of Arizona and Payson Community of Yavapai-Apache Indians, cause numbers 186 and 187.

MR. KOLSRUD: My name is Russell Kolsrud. I'm from the Arizona Attorney General's Office, representing the State of Arizona in cause number 182 through and including 187, and also the Fort McDowell case, 267.

MR. SHRAGO: Alvin H. Shrago with Evans Kitchel & Jenckes representing Phelps Dodge Corporation in cause number 79-267.

MR. THOMAS: Gary Thomas. I'm appearing as local counsel for Fort McDowell Mohave-Apache Indian Community, number 79-267 and also Mr. Lawrence A. Aschenbrenner and Arlind F. Locklear are here.

THE COURT: Is that all counsel present?

MR. CARROLL: Stephen Carroll from Land and Natural Resources Division, Department of Justice, United States, seek to file an amicus brief in 79-182 through 79-187.

MR. BLAKE: Your Honor, are you taking appearances in the Fort McDowell case if you don't appear in the other cases? My name is Kent Blake with the firm of Fennemore Craig. I represent Arizona Water Company in the Fort McDowell case.

THE COURT: Gentlemen, in proceeding with the arguments—and we will take up first the cause number 182 through 187—those are the motions to dismiss or remand, the Court would advise counsel that in discussing the motions of the respective parties to dismiss and remand, that very substantially in these cause numbers, the motions are for the same or very similar reasons and for that reason, as we proceed, the Court will not desire that each counsel will repeat the argument that has been made by previous counsel.

Counsel will also keep in mind that the Court has read the briefs. You may summarize and get to the point.

The Court also advises counsel that the court does not expect any attorneys to argue more than 20 minutes, at the very outside a half an hour. The Court feels that is adequate time under the circumstances. The counsel will keep that in mind.

Counsel may proceed in cause number 182.

MR. LEWIS: May it please the Court, as I said, my name is Byron Lewis and I represent the Salt River Valley Water Users Association, the Salt River Project Agricultural Improvement and Power District. Most of the attorneys representing the non-Indian litigants in these proceedings met on Monday of this week and we agreed to a division of the subject matters to be presented at today's hearing. We were called late yesterday by a representative from the Solicitor's Office to attend a meeting at 10:00 o'clock this morning, which we did, to further discuss the dividing up of the hearing today. The result of that motion was less than unanimous as to how this proceeding should be handled.

We would like to make it clear at the outset we believe there are certain common issues involved in all the cases, including the Fort McDowell case which we think would best be handled by discussing them all at one time.

We would also like to make clear at the outset, though, that we do not believe that the United States appear in this proceeding as an amicus curiae.

We filed yesterday a Motion to Strike the Amicus Curiae appearance. The Court has had an opportunity to read that and should be able to see that we do not believe that they are an amicus curiae. They are in fact a party to these proceedings.

To put that matter in proper perspective, before I get into the actual legal arguments, I would like to review very briefly the background as to how we got in the position we are presently in.

In April of 1974, the Salt River Valley Water Users Association filed a petition in the State Land Department, under a State Act as it then existed, to determine the conflicting rights to the use of water from the Salt River above Granite Reef Dam. This excluded the Verde River and its tributaries.

A little bit less than two years later, in February of 1976, the Association filed a similar petition to determine a conflict of the rights of the use of the water from the Verde River System. It was determined there were approximately twelve thousand potential claimants on the Salt System, approximately eighty thousand potential claimants on the Verde System.

The Verde River System has not yet been served notice of this. However, in January of this year notice was sent to approximately 11,936 claimants on the Salt River. This notice advised the potential claimants of the necessity for filing claims and defined the procedure for filing claims and advised that failure to make a claim could result in the loss of rights to the use of the water on the Salt River System.

It was in response to that notice that the claimants on the Salt River System, White Mountain Apache Tribe of the Fort Apache Indian Reservation, Gila River Indian Community, Salt River Pima-Maricopa Indian Community, filed petitions with this Court to remove the determination from the State proceedings to the Federal forum.

It was also in response to that notice of claimant on the Salt River that the Salt River Pima-Maricopa Indian Community, the San Carlos Apache Tribe of Indians, Payson Community of Yavapai-Apache Indians filed complaint here in the Federal District Court.

As the Court is aware, these complaints seek a declaration of rights of these Indian tribes to water of the Salt River—excuse me, I'm getting ahead of myself.

The complaints that were filed seek declarations from this Court that the State of Arizona has no jurisdiction to adjudicate the water rights of these Indians and further request the Court to enter a permanent injunction prohibiting the State of Arizona from proceeding on the Salt River adjudication proceedings.

The San Carlos Tribe and the Payson Community have also requested in the alternative that their complaints be treated as petitions for removal.

It was in response to the petition for removal that Water Users Association and the State of Arizona filed motions to remand. In response to the complaints for declaratory judgment, we all filed Motions to Dismiss.

During the course of the proceedings, various other motions have been filed by some of the different tribes.

Then, on April 13th of this year, the Fort McDowell Mohave-Apache Indian Community filed a complaint in this Court against the Water Users Association, Salt River Project Agricultural and Power District, the State of Arizona, Phelps Dodge, the City of Phoenix and various other cities and water companies and cattle companies.

The Fort McDowell complaint in the first cause of action seeks a declaration to its rights to the use of water of the Verde River System, and the Fort McDowell complaint purports to be a class action suing the named defendants individually as a class representative.

The second cause of action in that complaint is against the Salt River Project defendants only. It is a claim for money damages for the alleged deprivation of the community water rights.

In response to the Fort McDowell complaint, the various defendants have filed Motions to Dismiss which raise numerous issues. There are various issues which I think are common to all of these suits which stem from the application of 43 U.S.C. 666, the McCarran Amendment. The application to the United States Supreme Court decision

and Colorado River Water Conservation District versus United States, known as the Akin Decision. These common issues, looking at an analysis of the Arizona Water Adjudication Act and whether it measure up to the McCarran Amendment requirements, the sovereignty immunity claim of the tribes, the effect of the Arizona Enabling Act, the McCarran Amendment as to jurisdiction, the Akin mandate — those are issues which are common to the three removal proceedings and three complaints for declaratory relief which pertain to the Salt River proceedings, which are not necessarily common to the issues raised in the Fort McDowell complaint.

The issues common to the Salt River proceedings are whether the Salt River proceedings and the McCarran Amendment, and stream adjudication, propriety of removal of the McCarran Amendment, the effects of the amended Arizona Water Adjudication Act on the pending State proceedings.

I would like to simply note that there are a number of other issues and subissues involved in these proceedings, particularly the Fort McDowell case which we think has been thoroughly briefed. Due to the number of parties involved I do not intend to discuss those issues in my opening argument, however, if any of the parties to the proceedings wish to discuss those, then we will obviously want a short period of time for reply.

At this point I had intended to turn this matter over to Mr. Al Shughart representing the Phelps Dodge defendant who was going to discuss the issues which are common under the McCarran Amendment and the Akin decision that are common to all of the proceedings. If the Court would prefer that we follow in the sequence of 182 through 187 and save the Fort McDowell for later, I will proceed to the argument of other issues.

THE COURT: Why don't you do that.

MR. LEWIS: Very briefly again, these issues on the effect of the McCarran Amendment, and the Akin decision, have been very thoroughly briefed. As you have indicated, you have read them. I don't intend to get into any details.

THE COURT: Excuse my interruption. Do all counsel agree that we should include at this time the Fort McDowell matter?

MR. COX: No.

MR. LEWIS: The McCarran Amendment issue and the Akin decision, I think make it very clear that there is jurisdiction in the State forum to adjudicate the rights claimed on behalf of the Indian Tribes whether they are claimed by the Tribes themselves or the United States. The Akin decision is right on point. The McCarran Amendment is right on point. There has been some question as to sovereign immunity of the Tribes. This was waived by the McCarran Amendment and is made clear by the Akin decision. Even if the Tribe cannot be made a party directly, they United States can and in fact has been a party. The United States as trustee for the Indian Tribes will have to appear and assert those rights. Therefore, they are subject to State adjudication proceedings.

There has been an extended discussion of the effect of the Arizona Enabling Act, the Arizona Constitution and the McCarran Amendment, jurisdiction. This again has been thoroughly briefed.

There is a very recent decision of the Tenth circuit right on point, the Jicarilla case. I don't know how you can possibly distinguish that because it is the very same enabling act we are talking about today.

I would like to go to the question now as to whether or not the Salt River adjudication proceeding meets the requirements of the McCarran Amendment. The Tribes have

argued that the Salt River adjudication is not a general adjudication within the purview of the McCarran Amendment, since it is limited to the Salt River above Granite Reef Dam and excludes the Verde River.

They have also argued that ground water was excluded from the Salt River proceedings and this excludes application of the McCarran Amendment.

As I have already noted, the petitions to determine conflicting water rights have been filed on both the Salt and Verde Watersheds. The Salt River has its origin in the White Mountains in northeastern Arizona, traverses across the State in a generally southwesterly direction, runs through the Salt River Valley and joins the Gila River, a tributary of the Colorado southwest of Phoenix. The confluence between the Gila and the Salt is approximately 36 to 40 miles, somewhere in that area, south of the Granite Reef diversion. The Verde River joins the Salt approximately three miles above Granite Reef diversion dam east of Phoenix. Except for extraordinary flood waters, the entire flow of the Salt and Verde Rivers are either stored above the respective river systems or diverted at Granite Reef for beneficial use in the Salt River Valley.

The conflicting rights to the use of the Salt River diverted at Granite Reef have previously been determined and adjudicated in Hurly versus Abbot, which was in the District Court for the Territory of Arizona which resulted in the Kent Decree in 1910. I am sure the Court has seen a copy of the Kent Decree. It is appended to one of the memoranda in this case.

Upon completion of the general stream adjudication of the Salt and Verde River Systems, all of the conflicting claims to the use of the water is going to be fully determined from the headwaters of the Salt and Verde Rivers and their tributaries to Granite Reef.

The McCarran Amendment permits joinder of the United States as a defendant in suits for the adjudication of rights to the use of water of a river system or other source. However, in order to qualify as a McCarran Amendment proceeding, there are certain requirements that must be met. The basic requirement is that all claimants must have notice of this proceeding and an opportunity to appear. They cannot refuse to appear without forfeiting their claim. The McCarran Amendment proceeding as the cases indicate is intended to be universal and to result in a complete ascertainment of all the existing rights. However, none of the cases in the McCarran Amendment legislative history do not require that all tributary streams be joined in a common proceeding, particularly where you have a separate watershed as we have on the Salt and Verde River systems. The Water Users Association's designation of the Salt River and its tributaries excluded the Verde River which we believe fully meets the McCarran Amendment requirements.

Notice has been published and mailed to approximately 12,000 potential claimants of the water of the Salt River system. They have been clearly apprised—it has clearly apprised the recipients of their rights to appear in State proceedings and prove their claims. They have been advised that if they don't appear and prove their claims, they have forfeited those rights.

The Salt River proceedings is the common one in which the rights of all claimants on this stream system will be ascertained and stated.

Notice has been given all down the Salt River stream system. There is an indication in one of the memoranda filed that only the Gila River Indian Community has been notified as parties below the Granite Reef diversion. That is incorrect. All potential claimants that could be identified, including Roosevelt Water Conservation District, Buckeye

Irrigation District, Roosevelt Irrigation District, cities in that stretch of the river, all potential individual claimants that could be identified have been notified of this proceeding.

In the event they are claiming water rights to divert water at or above Granite Reef Dam, they have notice, they can appear in the State proceedings.

Neither the McCarran Amendment in its legislative history nor decisions interpreted exactly what the statutory term quote river system end-quote means. That's the term that's used in the McCarran Amendment, but this has not hampered general adjudications of stream systems.

The Courts have exercised particular care to insure that all potential claimants to the use of water from the stream segment are joined in the proceedings.

This seems to be a requirements of the McCarran Amendment whether you litigate all of the stream system at one time or whether you do them in discreet separate proceedings. The primary factor has noticed to all parties the opportunity to be here or forfeit their rights.

The watersheds of the Salt and Verde Rivers encompass distinct geographical areas. If you look at this relief map, you can see there are segregated watersheds. The joinder of 12,000 claimants will result in a complete adjudication of the conflicting rights on the Salt River system among the parties.

A similar proceeding pending in the Verde System is going to result in adjudication of those rights. The only persons that are affected by the use of the water under either of these separate streams are those claimants that appropriate water below the confluence. Those rights were adjudicated in Hurley versus Abbott and Benson Allison Decree in 1907 and the Hagar Decree in 1903.

Again, those persons have been notified of the proceeding and if they have any claim to make they can be made in this proceeding.

The Association objects to the inclusion of the Verde River System in the Salt River proceedings, which of practicality is going to take some time to adjudicate the Salt River System. It's going to take some time to adjudicate the Verde River system. Both of these proceedings are pending at the same time, although the Verde River System hasn't been served. We don't know of any prejudice to the Tribe or any other claimants that are going to result by the adjudication of these rights in two separate proceedings.

In fact, if it would require factual determination to show there were any such prejudices, that certainly isn't something that is before the Court on these hearings. If you follow Tribe argument to a logical conclusion, I think it would lead to an absurd result. It would mean that we would have to start at the Colorado River, move to the Gila River, move to the Salt River, the Verde River, the San Francisco River, before we could adjudicate any of them. I think if you look at it from the standpoint of taking the discreet stream systems, you can adjudicate the Verde System, the Salt, you can adjudicate the San Pedro, you can adjudicate the San Francisco, the Gila, you have got something you can work with. You're talking about just on the Verde System and Salt System alone, about 90,000 potential claimants.

I'm not presenting to the Court that all those people are going to appear and assert water rights. Hopefully they are not, but they have to be notified of the pendency of the proceedings. We have no idea how many are going to appear. The time to appear on the Salt River has been continued now until December of this year, due in part to the removal of these actions, but again really the question

of separate watersheds and practical matters, you have to start somewhere to adjudicate these systems. We asked to start on the Salt, then the Verde, then go on to the Gila and other portions of the system.

Arguments have been made by several of the memoranda, the adjudication decision of Hurley versus Abbott requires the Verde to be joined. That wasn't even before Judge Craig then. What was before him, the issue that was before him was to determine — not to determine whether there was a McCarran Amendment proceeding before him, he was only concerned with the reappearing Kent Decree or partial adjudication.

The Court will see from reading Dugan versus Rank, proceedings of that nature would not qualify as a McCarran Amendment proceeding.

If you read Justice Douglas' decision, when a whole community of claims is involved as is true in the present proceeding, then you do have a McCarran Amendment proceeding. This simply wasn't before Judge Craig at the time he rendered his decision on Hurley versus Abbott.

Regardless, we think there is a practical solution to the problem if the Court determines that both the Salt and Verde Systems should be joined in a common proceeding and that would be for the Court to remand this action to the Maricopa County Superior Court on the condition that it be consolidated with the pending action on the Verde System. This course of action we believe would promote judicial economy. It would avoid needless expense of renoticing to 12,000 claimants of a new proceeding.

As a result of all these conflicts of rights adjudication proceedings, the water rights in the State of Arizona over a period of time are going to be completely litigated. We believe the proper forum under the McCarran Amendment is the State court for those actions to take place.

The argument of the Tribes that the Arizona Adjudication Proceeding is deficient because it does not include ground water is inaccurate.

Second, there is not basis for a denial of the McCarran Amendment jurisdiction. Arizona law specifically provides that a prior appropriator of surface water can protect his water rights from the use of underground waters, a hydrologically connected stream floor. It is only percolating ground water which is not subject to a prior appropriator, thereby the water is under the same ruling as in the State of Colorado where in the Akin Decision and the McCarran Amendment, there's no requirement that percolating groundwater be adjudicated as part of the river system or other source. Percolating groundwaters are not a part of the river system. We think our position has been strengthened a great deal by the recent decision of the Supreme Court in Wilson versus Omaha Indian Tribe, where the Supreme Court held that federal law should borrow state law in an accretion-avulsion controversy involving Indian lands. We think from the Wilson case that it is clear that the term hydrological connection should be defined by state law. Then as a practical matter, there will be no difference between any claims to subsurface waters, regardless of whether they arise under state law or federal law.

We do not agree with the tribe that the Cappaert — or whatever the correct pronounciation is — decision applies to the reserve rights to underground water. That decision involves the surface water supply. As is very apparent from the Court's opinion, it did not involve percolating groundwater.

In any event, the tribes' right to assert federal reserve rights in state adjudication proceedings protected by the amended Arizona Adjudication Legislation, which does not suffer from any infirmity.

As a practical matter, if there is any problem regarding the question of groundwater rights, that water problem is going to exist whether or not those rights are adjudicated in federal or state court. It is not the forum that solves that problem.

Unless the Court has any questions on the matters I have discussed, I would like to allow Mr. Kolsrud on this point to discuss the propriety of remand, the effect of the amended Arizona Water Adjudication Act.

THE COURT: The Court has no questions.

MR. KOLSRUD: May it please the Court, my name is Russell Kolsrud. I'm from the Attorney General's Office, as I said, and represent the State of Arizona in all of these actions.

I'm going to primarily discuss two topics raised by the pleadings. The motion to remand filed by both the State of Arizona and the Water Users' Association, and secondly, the effect of Senate Bill 1239 as it relates to the proceedings in state court.

You have just heard arguments from Mr. Lewis regarding the applicability of McCarran to the state adjudication proceedings on the Salt River. The threshold issue for both the Motions to Dismiss the actions and the Motion to Remand these actions is the time, that is under the applicability of McCarran, a dismissal is mandatory of the complaint and also the motions to remand have to be granted.

Once the Court reaches the conclusion that McCarran applies to the Salt River proceedings, then a question has arisen: Is that a removal to this court? The answer is: No, it is not.

The McCarran Amendment was enacted in 1952. The Bill as it was drafted and introduced provided — it had a special section in the Bill, quote, "The United States shall have the right of removal to the Federal Court of any such suit in which it is a party."

Now, the Bill is drafted and went to a Senate Hearing. One of the major topics of discussion at that hearing or at those hearing which began in April, 1951, was the removal of the issue.

It was anomalous for the United States to on the one hand waive immunity as far as adjudication of water rights in the state courts when the courts of the territories and states could not adjudicate the water rights on any stream since the United States was still immune from suit. When the McCarran Amendment was introduced, it not only waived all immunity of the United States but also provided for removal upon petition in removing it into the federal system.

Even the Department of Justice was critical of the removal petition. Indeed, Mr. Veeder, who is sitting here today arguing for removal, represented the Department of Justice at that hearing and he was critical of that removal provision in the petition.

Quoting: "We would have the situation where the federal court was adjudicating rights, and superceding in effect the state procedure which is in existence."... Quote: "I don't think that's desirable at all."

That's page five of the transcript. Congress obviously agreed with that position because they took that provision from the Bill and it was stricken.

The question then is: What implications do we derive from that process in the history of that bill? Obviously Congress recognized the problem. Congress certainly did not intend that every state could adjudicate water rights in a state court with the United States in some connection, either whether they were Indian water rights, forest rights,

Bureau of Reclamation—whatever—to simply walk in the court and file a petition to remove. The mandate from Congress was that can't be done and every case has discussed that and has dealt with this issue, has borne this out.

The first case that came down and we have cited this is Utah versus United States, 147 Fed. Supp. 127. This case involved an action instituted originally in state court by the Utah Water Engineering. The United States was served as a defendant in various capacities holding various water rights.

The United States filed a petition to remove. The Utah Engineering filed a Motion to Remand the case back to the state court. Judge Christenson granted that motion on a very extensive analysis of the McCarran Amendment. He went through there, took every issue raised by the United States—there were very many of them—rejected all of them and sent the case back to the state proceedings.

I'm not going to go through every issue raised in that case. There were two major issues in that case, both of which were raised in proceedings before this court and both those issues were expressly rejected in Green River.

Initially, it should be remembered that any motion, any petition to remove state proceedings pursuant to § U.S.C. 1441 that federal questions must be an essential element of the plaintiff's cause of action. The federal claim must appear thereon. That is the general basic law of removal. Realizing this, the tribes argue that mere status as Indian Tribes, that alone is sufficient to permit removal of the McCarran proceedings pursuant to 1441.

That is exactly what Congress rejects by striking the removal provision out of the McCarran bill. That argument was expressly rejected in Green River. Even Akin bears this out.

That case dealt specifically with Indian rights, water rights. That case was dismissed.

Secondly, in Green River, this is basically the same argument, but has a peculiar twist to it. The United States argues that it is implicit in every action where the United States is a defendant that a federal question would arise. Therefore, that says removal under 1441. Green River rejected that contention for the same reason they rejected the status argument.

The basic removal law, the complaint is to have a better federal question which is the basis of that complaint. All we have here is a petition filed by the Salt River Project. That petition to adjudicate water rights under state law, that argument raised by the tribes was rejected in Green River. You should reject it here.

One more thing about the Green River case. The judge there answered that and said that if all the United States had to do upon the filing of the state proceeding was to walk into federal court and file a petition for removal, virtually every adjudication case or the general adjudication case would end up in federal court so that the court stated at 148, the resulting burden might be incontrollable from the standpoint of judicial administration.

That's exactly the problem you have been seeing here. Here the Gila River, which has not yet been served, a potential 400,000 claimants for a particular watershed. We have the Salt River, the San Pedro and Little Colorado. It would be intolerable for this Court and therefore the Court in Green River rejected it.

Finally, there are two more cases dealing with removal. The 1975 New Mexico case, New Mexico Ex Rel Reynolds, and the citation is 408 F.Supp. 1029. The court was dealing with another McCarran Amendment adjudication. The motion to remand was granted. The court said the right of removal is not implicit as in McCarran, the fact the United States is a defendant. Again, it's consistent with Green River and consistent with the legislative history.

In the Jicarillo-Apache Tribe case which was

MR. LEWIS: Your Honor, I will try to keep the reply on behalf of the Salt River Valley Water Users Association fairly short so that we can move along.

First of all, Mr. Veeder mentioned Dugan versus Rank. It should be pointed out that Dugan versus Rank involved a 60 mile stretch of the San Joaquin River in California. The court has no problem with the depth of the river involved in the case. The problem there was lack of notice to all the parties who were claimants. It was a private action between several claimants. There was no general adjudication in that proceeding.

Mr. Veeder has taken the interesting position that you could cut this proceedings off where the Salt River joins the Gila River. That I see no basis for, if you can do that, then you can cut the Verde River off where it joins the Salt River which is exactly what we have done in that proceedings. If you have to adjudicate, even if it means to have the courts in California adjudicate the Gila and Salt River and all the tributaries to the Gila River. There is in fact no water flow below Granite Reef Dam, from the Granite Reef Dam to the Gila River. I don't see any reason why you would go to the Gila River. I think it's just as logical to put it off the way we have in this proceedings.

If the court does not believe that we can cut the proceedings in the manner in which we have cut it between the Salt and the Verde Rivers, then I think the court can remand to the state with directions to consolidate those two proceedings, go all the way to the Gila River and go all the way to the Colorado River if necessary. You can have your separate adjudications and rights can be administered together once they are all adjudicated. I don't think we're talking about the year twenty twenty before we could get that done.

Mr. Veeder also made the argument that for some reason the Akin decision allows removal. The Akin decision was the original action. The Akin decision said there could be concurrent jurisdictions, said nothing about removal.

It also said that: We favor state jurisdiction in a proceedings exactly like we are before this court on today.

Mr. Cox, in his usual colorful and entertaining manner, tells the court that he doesn't know why he's here. Then he turns around and tells the court that his tribe that he is representing claims all the water on the Salt River above Granite Reef Dam. I think it's very obvious that that statement is why he's here today. He does not believe that his tribe has any interest in this adjudication proceeding. His tribe does not have to assert any claim.

V. *Fort McDowell Mohave-Apache Indian Community v. State of Arizona, et al.*, No. CIV 79-267 PHX VAC, No. 81-5219

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
CAUSE NO. CIV 79-267 PHX VAC

Date *Description*

Apr. 13, 1979—Complaint filed

May 29, 1979—Motions to dismiss filed by defendants Phelps Dodge Industries, Inc., Salt River Valley Water Users' Association and the State of Arizona

Sept. 21, 1979—Oral argument on all motions to dismiss consolidated with the other actions indicated herein

Jan. 18, 1980—Order granting motions to dismiss and dismissing the second cause of action, the Court being of the opinion that no action for damages could be entertained until the State had established the parties' rights to the waters of the Verde River watershed

Jan. 25, 1980—Judgment that complaint and action are dismissed without prejudice

Feb. 4, 1980—Motion to amend judgment

Feb. 25, 1980—Order issued extending time to file appeal for thirty days

Mar. 10, 1980—Post-trial motions denied

Mar. 11, 1980—Notice of appeal filed

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
DOCKET NO. CA 80-5219

Date *Description*

July 15, 1981—Oral argument

Feb. 23, 1982—The Court's opinion in *San Carlos Tribe v. Arizona* was issued

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES (Cont.)

IN THE SUPREME COURT OF THE UNITED STATES
NO. 81-2147

Date *Description*

May 12, 1982—Petition for Writ of Certiorari

Oct. 4, 1982—Order granting Petitions for Writs of Certiorari in Nos. 81-2147 and 81-2188 consolidated

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY, for and on behalf of itself and its members, *Plaintiff,* v. SALT RIVER VALLEY WATER USERS ASSOCIATION; SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT; CITY OF PHOENIX; CITY OF PRESCOTT; CITY OF JEROME; PHELPS DODGE CORPORATION; PHELPS DODGE INDUSTRIES, INC.; ARIZONA WATER COMPANY; MILLER BROTHERS FARMS, INC.; CAMP VERDE WATER SYSTEMS; COTTONWOOD WATER WORKS, INC.; COPPER BASIN WATER CO.; V BAR V CATTLE CO., INC.; HAROLD W. BULLARD; and the STATE OF ARIZONA, individually and as representative of a class composed of all others similarly situated, *Defendants.*	No. CIV 79-267 PHX WPC COMPLAINT

For its first cause of action, the Fort McDowell Mohave-Apache Indian Community on behalf of itself and its members, (hereinafter "Community" includes its members and their predecessors in interest) alleges as follows:

This is a civil action in which the Community seeks a declaration of its rights in and to the use of the Waters of the Verde River and its tributaries, hereinafter "Waters of the Verde River Watershed". [As used herein "Waters of the Verde River Watershed" means any and all water in, under or upon the Verde River watershed which, if unused and uninterrupted, would increase the quantity of water

available to the Community by diversion, pumping or in recharging the groundwater under the Ft. McDowell Indian Reservation, Arizona (hereinafter "Reservation"); and also means and includes any water in, under or upon the Verde River watershed, the use of which diminishes the water which otherwise would be available for beneficial use on the Reservation, including recharging the groundwater under the Reservation.]

II

The Court has jurisdiction under 28 U.S.C. 1331 and 1362. This action arises under the United States Constitution, article I, section 8, cl. 3; the United States Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, (Treaty of Guadalupe Hildalgo, arts, VIII and IX, February 2, 1848, 9 Stat. 922); the Executive Order creating the Reservation of September 15, 1903; Act of April 21, 1804, 33 Stat. 189; 28 Stat. 491; 25 U.S.C. 476, 477; and federal common law. The amount in controversy exclusive of costs and interest exceeds ten thousand dollars ($10,000).

III

The Community is a federally-recognized Tribe of Indians organized pursuant to 25 U.S.C. § 476. The Community's Constitution and Bylaws were approved by the Secretary of the United States Department of the Interior on November 24, 1936. The Community is recognized by the Secretary of the Interior as having jurisdiction over its Reservation and authority to represent its members.

On information and belief it is alleged that the named defendants are persons or entities using or seeking to use waters of the Verde River watershed or are claiming rights to the use of these waters. All defendants are either residents of the State of Arizona or are entities authorized and doing business in the State of Arizona. The State of Ari-

zona is named as a defendant in its proprietary capacity, in its governmental capacity as the regulator of water uses under and in accordance with state law, and as parens patriae for its citizens, individual, corporate and otherwise.

1. The named defendants are sued individually and as representatives of all other persons or entities using or seeking to use water of the Verde River watershed or claiming rights to the use of such waters.

2. The number of members in the above described class exceeds 1,000 persons and is, thus, so numerous that joinder of all members is impracticable. All relevant questions of law and fact are common to the class of defendants and the defenses of the named representatives are typical of the defenses of the class. The named representatives include both public and private claimants of the subject water and will fairly and adequately represent the interests of the class.

3. The prosecution of separate actions against individual members of the defendant class would create a risk of inconsistent judgments which would, as a practical matter, substantially impair their ability to protect their interest.

4. The questions of law and fact common to members of defendant class predominate over any question affecting only individual members and a defendant class action is superior to other procedures for the fair and efficient adjudication of the controversy.

V

The Reservation of the Community is located within Maricopa County, Arizona. It is also within and is but a part of the Community's aboriginal (antedating Spanish sovereignty) lands. The Reservation was established by the Act of Congress of August 23, 1894, 28 Stat. 491; the Act of April 21, 1904, 33 Stat. 189; and the Executive Order of President Theodore Roosevelt of September 15, 1903.

VI

The Verde River watershed is within Yavapai, Gila, Maricopa and Coconino Counties, Arizona. The Verde, which is a tributary of the Salt River rises on the south slopes of Bill Williams Mountain. Its source is commonly recognized as below Sullivan Lake on Big Chino Wash, upstream from Granite Creek near Paulden in Yavapai County, Arizona. It flows in a southwesterly direction to join the Salt River just south of the Reservation about 20 miles northeast of Phoenix, Arizona.

VII

From time immemorial, the Community has resided on and near the lands presently comprising the Reservation, irrigating arable land and otherwise beneficially using the waters of the Verde River and its tributaries.

VIII

From time immemorial, the Community has had the right to the use of water from the Verde River and its tributaries sufficient to satisfy all beneficial uses on its aboriginal lands.

IX

From time immemorial through the periods of Spanish (1540-1821) and Mexican (1821-1854) sovereignty, the Community continued the use and occupation of the land (including its water) on and around the Reservation.

X

The Community has never relinguished nor has any sovereign taken, in whole or in part, the right to the use of waters of the Verde River and its tributaries necessary for present and future beneficial uses on the Reservation.

XI

The political jurisdiction and protection of the United States was extended to the area including the Reservation by the Treaty of Guadalupe Hidalgo. By Articles VIII and IX of the Treaty of Guadalupe Hidalgo and by assurances

of the United States as a sovereign to the Community, the United States guaranteed that the Community would be maintained and protected in the free enjoyment of its immemorial water rights. The right of the Community to the use of waters in an amount sufficient to meet its needs in the enjoyment of the Reservation has been, at all pertinent times, recognized by the Governments of Spain, Mexico and the United States.

XII

No purchase or other conveyance of Reservation lands, or of any title or claim thereto nor of any water or water rights belonging to the Community has been made by treaty or convenant entered into pursuant to the Constitution of the United States. The Community's immemorial water rights remain protected by 25 U.S.C. § 177.

XIII

By the establishment of the Reservation, the immemorial rights of the Community to the use of the waters in amounts sufficient to meet its needs in the enjoyment of the Reservation and to otherwise fulfill the purposes of the Reservation were not diminished but were confirmed as being held by the United States as trustee for the benefit of the Community and thus not subject to private appropriation as against the Community. The purposes for which the Reservation was established include support of a permanent community, irrigation of all practicably irrigable Reservation land, and use of all additional waters necessary to the full utilization of the Reservation and its resources for the benefit of the Community and its successors in interest.

XIV

In establishing the Reservation, the United States reserved at least sufficient water to adequately irrigate all of the practicably irrigable acres on the Reservation. There are approximately 7,400 acres of arable land on the Reservation which are practicably irrigable with waters from the Verde River and its tributaries.

XV

Upon information and belief the Community alleges that each and all defendants and the class they represent have used, are using or claim rights to use waters of the Verde River watershed, which use or claim is adverse and detrimental to the water rights of the Community.

XVI

Excessive pumping and diversions by defendants have diminished waters of the Verde River watershed.

XVII

The Community needs and, but for the wrongful use by defendants, would beneficially use additional waters of the Verde River watershed.

XVIII

The Community has been repeatedly informed and believes that water users, including defendants, may believe that the Community has little or no rights ahead of defendants to the use of the waters of the Verde River watershed.

XIX

The Community is informed and believes that the Community's rights to the use of waters of the Verde River watershed have not been definitively judicially determined.

XX

Lack of water for irrigation of the practicably irrigable lands on the Reservation and for other beneficial purposes has been the major cause of poverty on the Reservation. Such proverty continues today and will continue until the Community's water rights are determined.

XXI

The defendants and each of them claim rights in or rights to the use of the waters of the Verde River watershed in the State of Arizona, which rights are adverse to and jeopardize the rights of the Community and its members.

For its second cause of action, with respect to Defendants Salt River Valley Water Users Association, Inc., and the Salt River Project Agricultural Improvement and Power District (hereinafter referred to as "S.R.P."), the Community alleges as follows:

I

Realleges paragraphs I through XXI of its first cause of action.

II

In the past, the flow of the Verde River permitted surface water to be diverted for use on the Reservation for irrigation and stock watering. This flow also provided necessary water to support the growth of large cottonwood trees, other smaller trees, bushes, plants, fish and wildlife in and along the banks of the river on the Reservation. Defendant S.R.P. has, on numerous occasions and without notice to or the consent of the Community, made excessive water withdrawals from the Verde River upstream from the Reservation causing the flow of the River within the Reservation to substantially decline or disappear entirely.

III

Such excessive diversions by Defendant S.R.P. over the past 75 years, and particularly since the completion of Bartlett Dam in 1939, have caused extensive destruction to crops, stock, trees, bushes, plants, fish and wildlife on the

Reservation. Further, these excessive and unpredictable diversions have severely curtailed farming, stock watering, recreational, and other economic enterprises on the Reservation. And these diversions and their consequent destruction of plants and wildlife have irreparably injured and damaged the aesthetic and ecological environment of the Reservation. If such withdrawals continue, the Community's employment level and degree of poverty will rise, thereby subverting the purposes for which the Reservation was established. On information and belief, Defendant S.R.P. claims the right to continue such excessive diversions in the future. Absent injunctive relief against the S.R.P., the severe and adverse economic and environmental consequences above mentioned will continue and increase.

WHEREFORE, plaintiff prays for relief as follows:

1. That this court enter a decree declaring that the plaintiff has rights, with a priority from time immemorial, to use such amounts of the surface and ground waters of the Verde River watershed, as are necessary to foster, promote and fulfill the purposes for which the lands of the Reservation were used by and set aside for the Community, including establishment of a viable permanent community, irrigation of the land, pasturage, and full utilization and exploitation of the natural resources of the Reservation for the benefit of the Community and that such rights of plaintiff are prior and paramount to the rights of the defendants.

2. That the court enter its order enjoining all of the diversions and uses of the water adjudicated herein except in accordance with the right and priorities as set forth in the court's decree.

3. That this court award money damages to plaintiff against Defendant S.R.P. in an amount adequate to compensate plaintiff for the losses sustained as a result of the excessive water withdrawals by Defendant S.R.P.

4. For its costs, attorneys' fees and such other and further relief as to the court may seem just and equitable in the premises.

Lawrence A. Aschenbrenner
Arlinda F. Locklear

By /s/ L.A. ASCHENBRENNER
Attorneys for Plaintiff

STATE OF ARIZONA
County of Maricopa } ss.

Clinton Pattea, being first duly sworn, desposes and says:

I am the duly elected, qualified and acting President of the Fort McDowell Mohave-Apache Indian Community. I have read the foregoing complaint and know the contents thereof. The allegations therein are true except as to the matters alleged on information or belief as to those I believe them to be true.

/s/ CLINTON PATTEA
Clinton Pattea
President
Fort McDowell Mohave-Apache
Indian Community

STATE OF ARIZONA
County of Maricopa } ss.

SUBSCRIBED AND SWORN TO before me this 13th day of April, 1979, by Clinton Pattea, President of the Fort McDowell Mohave-Apache Indian Community.

My Commmission expires:
My Commission Expires Sept. 9, 1979

/s/ JOE P. SPARKS
Notary Public

(SEAL)

Lawrence A. Aschenbrenner
Arlinda F. Locklear
Native American Rights Fund
1712 N Street, N.W.
Washington, D. C. 20036
202-785-4166

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

FORT McDOWELL MOHAVE-APACHE INDIAN COMMUNITY, for and on behalf of itself and its members, *Plaintiff,* v. SALT RIVER VALLEY WATER USERS ASSOCIATION, *et al.*	No. CIV 79-267 WPC APPLICATION

Comes now Lawrence A. Aschenbrenner and applies to the Court to appear and participate in the above mentioned case. I hereby designate Joe P. Sparks, 7503 1st Street, Scottsdale, Arizona 85251, Phone 602-949-1339, a member of the Bar of this Court to whom the Court and opposing Counsel may communicate regarding this case. I am a member in good standing of the bar of the Supreme Court of Oregon.

/s/ L. A. ASCHENBRENNER
Lawrence A. Aschenbrenner

I Consent:

/s/ JOE P. SPARKS
Joe P. Sparks

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY, *Plaintiff,* v. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *et al.*, *Defendants.*	NO. CIV 79-267 PHX-WBC MOTION TO DISMISS

Defendant Phelps Dodge Industries, Inc. ("PDI"), hereby moves pursuant to Rule 12(b)(1) and Rule 12(b)(6), *Fed. R. Civ. P.*, that the Court dismiss this action in order that all of the parties' water rights be determined in the state proceedings previously filed and already in progress. A Memorandum of Points and Authorities in support of this motion is attached.

DATED this 29th day of May, 1979.

EVANS, KITCHEL & JENCKES, P.C.

By /s/ ALVIN H. SHRAGO

Jerry L. Haggard
Alvin H. Shrago
363 North First Avenue
Phoenix, Arizona 85003
Attorneys for Phelps
Dodge Industries, Inc.

EXHIBIT A

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

IN THE MATTER OF THE DETERMINATION OF CONFLICTING RIGHTS TO THE USE OF WATER FROM THE VERDE RIVER AND ITS TRIBUTARIES INCLUDING OAK CREEK, BEAVER CREEK, WEST CLEAR CREEK, AND THE EAST VERDE RIVER. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW the SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation, and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, by its Articles of Incorporation and by agreement with the United States of America is charged with the duty of and is engaged in the delivery of water to all of the land having a valid water right situated within the Salt River Reservoir District.

II.

That the rights to the use of water upon land situated within the Salt River Reservoir District have been duly adjudicated and approved by that certain decree commonly referred to as the Kent Decree in the case of *Hurley vs. Abbott*, No. 4564 in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

III.

That as a result of the said Kent Decree and the appropriations made by the Petitioner and the United States of America for and on behalf of the Petitioner's shareholders prior to June 20, 1919, the date of the passage of the State Water Code, there has been appropriated by the Petitioner's shareholders and others all of the water of the Verde River and all of the tributaries thereto; that all of said appropriated waters, since their respective dates of appropriation, have been and continue to be beneficially used by Petitioner's shareholders and others.

IV.

That, notwithstanding that all of the waters of the Verde River and its tributaries, Oak Creek, Beaver Creek, West Clear Creek and East Verde River, have been lawfully appropriated and are now being put to beneficial use, your Petitioner is informed and believes and therefore alleges that from time to time from June 20, 1919 to the present, other diversions and uses of water have been made and are being made from the Verde River and its tributaries, Oak Creek, Beaver Creek, West Clear Creek and East Verde River, for irrigation and other purposes; that said diversions of water have been made without any legal right and have been made contrary to the laws of the State of Arizona and contrary to the State Water Code of the State of Arizona, all of which diversions and uses result in damage to your Petitioner's shareholders and the other landowners having valid appropriative rights to the use of such water by reason of the resulting diminished supply of the Verde River.

V.

That no comprehensive determination or adjudication of the conflicting rights to use water from the Verde River and its tributaries has been made for the land situated within the Verde River and its tributaries, Oak Creek, Beaver Creek, West Clear Creek and East Verde River, which said land is more particularly described by township and range in Exhibit "A", attached hereto and by this reference made

a part hereof and which said land is further shown on the map attached hereto, marked Exhibit "B" and "C" and by this reference made a part hereof.

VI.

That a determination of the relative rights of the various claimants to the waters of the Verde River and its tributaries in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245, is justified by reason of the large number of claimants to such water and the nature of the proceedings necessary to establish the legal rights of each.

WHEREFORE, your Petitioner respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated within the Verde River and its tributaries, Oak Creek, Beaver Creek, West Clear Creek and East Verde River, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245.

DATED this 24th day of February, 1976.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By /s/ R.J. McMULLIN
R. J. McMullin
General Manager

STATE OF ARIZONA }
County of Maricopa } ss.

On this the 24th day of February, 1976, before me, the undersigned Notary Public, personally appeared R. J. McMullin who acknowledged himself to be the General Manager of the SALT RIVER VALLEY WATER USERS' ASSOCIATION, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ DON E. SMITH
Notary Public

My Commission Expires May 3, 1979

EXHIBIT B

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the matter of the determination of conflicting rights to the use of water from the Salt River above Granite Reef Dam and its tributaries including Tonto Creek, excluding the Verde River and its tributaries. SALT RIVER VALLEY WATER USERS' ASSOCIATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW the SALT RIVER VALLEY WATER USERS' ASSOCIATION, a corporation, and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, SALT RIVER VALLEY WATER USERS' ASSOCIATION, an Arizona corporation, by its Articles of Incorporation and by agreement with the United States of America is charged with the duty of and is engaged in the delivery of water to all of the land having a valid water right situated within the Salt River Reservoir District.

II.

That the rights to the use of water upon land situated within the Salt River Reservoir District have been duly adjudicated and approved by that certain decree commonly referred to as the Kent Decree in the case of *Hurley vs. Abbott*, No. 4564 in the District Court of the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

III.

That as a result of the said Kent Decree and the appropriations made by the Petitioner and the United States of America for and on behalf of the Petitioner's shareholders prior to June 20, 1919, the date of the passage of the State Water Code, there has been appropriated by the Petitioner's shareholders and others all of the water of the Salt River and the Verde River and all of the tributaries thereto above Granite Reef Dam; that all of said appropriated waters, since their respective dates of appropriation, have been and continue to be beneficially used by Petitioner's shareholders and others.

IV.

That, notwithstanding that all of the waters of the Salt River and its tributaries above Granite Reef Dam, including Tonto Creek, have been lawfully appropriated and are now being put to beneficial use, your Petitioner is informed and believes and therefore alleges that from time to time from June 20, 1919 to the present, other diversions and uses of water have been made and are being made from the Salt River and its tributaries, including Tonto Creek, for irrigation and other purposes; that said diversions of water have been made without any legal right and have been made contrary to the laws of the State of Arizona and contrary to the State Water Code of the State of Arizona, all of which diversions and uses are in conflict with and result in damage to your Petitioner's shareholders and the other landowners having valid appropriative rights to the use of such water by reason of the resulting diminished supply of the Salt River.

V.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from the Salt River and its tributaries has been made for the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, which said land is more particularly described by

township and range in Exhibit "A", attached hereto and by this reference made a part hereof and which said land is further shown on the map attached hereto, marked Exhibit "B" and by this reference made a part hereof.

VI.

That a determination of the relative rights of the various claimants to the waters of the Salt River and its tributaries in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245, is justified by reason of the large number of claimants to establish the legal rights of each.

WHEREFORE, your Petitioner respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated within the Salt River Basin area above Granite Reef Dam, exclusive of the land within the Verde River Basin thereof, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245.

DATED this 26th day of April, 1974.

SALT RIVER VALLEY WATER
USERS' ASSOCIATION

By /s/ R.J. McMULLIN

R. J. McMullin
General Manager

STATE OF ARIZONA
County of Maricopa } ss.

On this the 26th day of April, 1974, before me, the undersigned Notary Public, personally appeared R. J. McMullin who acknowledged himself to be the General Manager of the SALT RIVER VALLEY WATER USERS' ASSOCIATION, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ DON E. SMITH
Notary Public

My Commission Expires May 3, 1975

EXHIBIT C

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the matter of the determination of conflicting rights to the use of water from the Gila River, below its confluence with the San Francisco River, and the Tributaries of the Gila River, including the San Francisco River, Chase Creek and Eagle Creek. PHELPS DODGE CORPORATION, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW, the PHELPS DODGE CORPORATION, a New York corporation authorized to do business in Arizona, by and through its attorneys, Evans, Kitchel & Jenckes, P.C., and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, PHELPS DODGE CORPORATION, is extensively engaged in the business of mining and smelting copper ore throughout the State of Arizona.

II.

That the Petitioner conducts a substantial amount of its mining and smelting activities at its operations in Morenci, County of Greenlee, State of Arizona.

III.

That Petitioner's Morenci operations require the availability of reliable supplies of water, which Petitioner has appropriated and required from other appropriators, and is putting to a beneficial use, from the San Francisco River, Eagle Creek and Chase Creek.

IV.

That the rights to the use of water from the mainstream of the Gila River have been duly adjudicated and approved by that certain decree commonly referred to as Globe Equity Decree No. 59 entered in the case of *United States v. Gila Valley Irrigation District*, No. E-59-Globe, in the District Court of the United States in and for the District of Arizona.

V.

That the said Globe Equity Decree No. 59 did not adjudicate and approve all of the present rights of Petitioner to the use of water from the San Francisco River, Eagle Creek and Chase Creek, each of which is a tributary of the Gila River.

VI.

That certain parties to *United States v. Gila Valley Irrigation District, supra*, have asserted rights to waters of the San Francisco River, Eagle Creek and Chase Creek presently being appropriated and beneficially used by Petitioner.

VII.

That Petitioner or its predecessors have appropriated, or acquired appropriated rights of others, and put to beneficial use the subject waters of the San Francisco River, Eagle Creek and Chase Creek at such times and in such quantities as to accord Petitioner prior and superior rights to the use of said waters as against any other claimant.

VIII.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from the San Francisco River, Eagle Creek and Chase Creek and perhaps other tributaries of the Gila River has been made for the land situated along said tributaries and situated within the

Gila River Basin area below the confluence of the Gila and San Francisco Rivers, which said land is more particularly described by township and range in Exhibits "A" and "B" attached hereto and by reference incorporated herein.

IX.

That a determination of the relative rights of the various claimants to the waters of the entire Gila River System, including the San Francisco River, Chase Creek and Eagle Creek, in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, sections 45-231 through 45-245, is justified by reason of the large number of claimants to establish the legal rights of each and by reason of the importance and significance to the State of Arizona of Petitioner's present use of water from the San Francisco River, Eagle Creek and Chase Creek.

WHEREFORE, Petitioner, PHELPS DODGE CORPORATION, by and through its attorneys, Evans, Kitchel & Jenckes, P.C., respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated along said tributaries and situated within the Gila River System below the confluence of the Gila and San Francisco Rivers, as decribed in Exhibits "A" and "B", pursuant to Arizona Revised Statutes, sections 45-231 and 45-245.

DATED this 17th day of February, 1978.

EVANS, KITCHEL & JENCKES, P.C.

By /s/ JERRY L. HAGGARD
Jerry L. Haggard
363 North First Avenue
Phoenix, Arizona 85003
Attorneys for Phelps
Dodge Corporation

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the Matter of the Determination of Conflicting Rights to the Use of Water from the Gila River, Below its Confluence with the San Francisco River, and the Tributaries of the Gila River, Including the San Francisco River, Chase Creek and Eagle Creek. PHELPS DODGE CORPORATION, *Petitioner.*	VERIFICATION

JERRY L. HAGGARD, being first duly sworn, upon his oath deposes and says:

That he represents the Petitioner, PHELPS DODGE CORPORATION, in the above entitled matter, and that he has read the above and foregoing petition and knows the contents thereof; that the same is true of his own personal knowledge except as to those statements made therein upon information and belief and as to those, he believes them to be true.

/s/ JERRY L. HAGGARD
Jerry L. Haggard

SUBSCRIBED AND SWORN to before me this 17th day of February, 1978.

/s/ DEBORAH R. LINGENFELTER
Notary Public
/s/ (nee McDaniel)

My Commission Expires May 31, 1980

EXHIBIT D

BEFORE THE STATE LAND DEPARTMENT
OF THE STATE OF ARIZONA

In the Matter of the Determination of Conflicting Rights to the Use of Water from the San Pedro River and the Tributaries of the San Pedro River, Including Aravaipa Creek. ASARCO INCORPORATED, *Petitioner.*	PETITION TO DETERMINE CONFLICTING WATER RIGHTS

COMES NOW ASARCO INCORPORATED, a New Jersey corporation authorized to do business in Arizona, and respectfully represents unto the State Land Commissioner as follows:

I.

That the Petitioner, ASARCO Incorporated, is extensively engaged in the business of mining and smelting copper ore throughout the State of Arizona, and also owns farm and ranch properties in Arizona.

II.

That the Petitioner conducts a substantial amount of its smelting activities at its operations in and near Hayden, County of Gila, State of Arizona.

III.

That Petitioner's operations at Hayden and vicinity require the availability of reliable supplies of water, some of which is groundwater Petitioner acquires from groundwater wells located on various parcels of its farm and ranch properties, and some of which is surface water Petitioner has acquired from other appropriators and put to beneficial use from Aravaipa Creek.

IV.

That certain parties have asserted rights to waters of the Aravaipa Creek presently being appropriated and beneficially used by Petitioner and have asserted that some of the groundwater being beneficially used by Petitioner is actually subflow of the San Pedro River and/or Aravaipa Creek.

V.

That Petitioner's or its predecessors' acquisition of appropriated rights and their beneficial use of waters from Aravaipa Creek have been at such times and of such quantities as to accord Petitioner prior and superior rights to the use of such waters as against any other claimant. That Petitioner's wells do not tap the subflow of the San Pedro River or Aravaipa Creek, but were they to do so, the appropriation and beneficial use thereof by Petitioner and its predecessors have been at such times and of such quantities as to accord Petitioner prior and superior rights to the use of such waters as against any other claimant.

VI.

That no comprehensive determination or adjudication of the conflicting rights to the use of water from the San Pedro River and Aravaipa Creek and perhaps other tributaries of the San Pedro River has been made for the land situated along said tributaries and situated within the San Pedro River Basin, which said land is more particularly described by township and range in Exhibit "A" attached hereto and by reference incorporated herein.

VII.

That a determination of the relative rights of the various claimants to the waters of the entire San Pedro River System, including Aravaipa Creek, in the aforementioned area by the State Land Department, pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245, is justified by reason of the large number of claimants to establish the legal rights of each and by reason of the importance and

significance to the State of Arizona of Petitioner's use of water from the vicinity of the San Pedro River and Aravaipa Creek.

WHEREFORE, Petitioner respectfully prays that the State Land Department give proper notice, fix a time to take testimony and make the examination necessary for the determination of the water rights of the various claimants to the land situated along said tributaries and situated within the San Pedro River System as described in Exhibit "A", pursuant to Arizona Revised Statutes, Sections 45-231 through 45-245.

DATED this 3rd day of April, 1978.

ASARCO Incorporated

By /s/ LARY G. CAHILL
Its Plant Manager

STATE OF ARIZONA }
County of Gila } ss.

On this the 3rd day of April, 1978, before me, the undersigned Notary Public, personally appeared Lary G. Cahill who acknowledged himself to be the Plant Manager of ASARCO Incorporated, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF I have hereunto set my hands and official seal.

/s/ CARMELITA C. HART
Notary Public

My Commission Expires 12/22/81